English Insurance Contract Law

Malcolm Clarke

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1st edition

ISBN 978-87-403-1209-6
Peer reviewed by John Birds, Emeritus Professor, University of Manchester Honorary Professor, University of Sheffield

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1 Insurance Contracts Defined

To learn how to recognise insurance; how to distinguish insurance from comparable financial products; and to know when to comply with legislation regulating insurance.

1.1 Introduction[1]

English courts do not define insurance but speak, for example, of "those who are generally accepted as being insurers".[2]

Compare the United States, where insurance has been defined as a "contract whereby one undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event";[3] and where the primary elements are the shifting (or underwriting) of riskand the distribution (or spreading) of risk.[4]

1.2 Description

In England, an insurance contract has been described as a contract (below 1.2A) whereby a person (the insurer), usually in business as such, agrees to pay money (1.2B) on the occurrence of an uncertain and adverse event (1.2C), in return for payment called premium (1.2D).

1.2A Contract

An insurance contract must be a binding contract.[5] Commonly it takes the form of an insurance policy; but in practice it may exist without a policy.

1.2B *Money*

Financial risk is transferred from A, the insured, to B, the insurer:[6] B compensates A for what A may have lost. In some cases, however, B pays (not money) but for A to receive benefits, such as the repair of property damaged, valuable advice

Thus, in one leading case the judge said that "it is difficult to see why a contract to provide [medical] advice and assistance should not be a contract of insurance".[7]

1.2C Fortuitous and Adverse Events

The occurrence of the event insured against must be fortuitous: uncertain at the time of the contract. The uncertainty may be not only *whether* the event will occur at all (such as theft) but also *when* the event will occur (such as death).

To be insurable the event must be one adverse to the interests of the insured[8] but not one against public policy, such as a gambling loss.[9]

1.2D Premium

Insurance contracts usually require the insured to pay 'premiums' in advance.[10]

1.3 Contracts to distinguish from Insurance

1.3A Reinsurance

A reinsurance contract is "is an independent contract under which the subject-matter reinsured is the original subject-matter. The insurable interest which entitles the insurer to reinsure in respect of that subject-matter is the insurer's exposure under the original insurance".[11]

1.3B Guarantees

Insurance contracts include credit insurance, where A promises to indemnify C, if B fails to pay or repay a debt, and where the primary feature is indemnity.

Distinguish credit insurance from performance bonds[12] and from guarantee contracts,[13] where guarantor A promises C to answer for the debt or default of another person, B.

1.3C Investment

Life insurance is often seen by financial markets as investment. To distinguish investment life insurance is difficult and each case must be examined on its own merits.[14]

1.3D The Supply of goods and services

Most supply contracts entail some allocation of risk (one of the key features of insurance).

For example, on the sale of a business there may be warranties of turnover.

Insurance "covers risks lying *outside* an insured's own deliberate control",[15] which distinguishes the risk element in the supply of goods and services.

2 Insurable Interest: Life

This chapter explains the English common law requirement that policyholders must have a special justifiable interest to contract insurance on the life of another person.

2.1 Introduction

Feasey, a leading case. divided insurance contracts, for analysis from this point of view, into groups, the second being

"cases where the court has defined the subject matter as a particular life of a particular person; and where the insurance is to recover a sum on the death of that person. In these cases the court has recognised an insurable interest in that life where a pecuniary loss flowing from a legal obligation will or might be suffered on the death of that particular person…".[16]

A justifiable insurable interest is presumed in each case, unless the contrary is shown; but note that the Married Women's Property Act 1882 section 11 confirms that a spouse is entitled to insure the life of the other spouse, for the benefit of the immediate family.[17]

2.2 Persons with an Insurable Interest

These are persons with a purely pecuniary interest (below 2A) and those with a non-pecuniary interest based in natural affection (2B); in each case the longer the life lasts the better.[18]

2.2A Pecuniary interest

Pecuniary means measurable in money.[19] Where spouses where work and contribute to household income, each spouse has a pecuniary interest in the life and working capacity of the other.

Further, a binding promise by a creditor not to enforce a debt as long as the creditor is alive gives the debtor a legal interest in the life of the creditor.[20]

But employers have no insurable interest in the lives of employees, except in the case important employees where their loss would have adverse financial consequences for the firm, called 'keyman' insurance.[21]

For example, when a famous designer (Versace) was murdered, Lloyd's paid life insurance of more than £20m.

If there is a pecuniary interest, the insurance is enforceable to the extent of actual interest.[22]

2.2B Natural affection

A husband may insure the life of his wife and a wife may insure that of her husband;[23] but (a rule that makes no sense) they are not allowed to insure the lives of their children.

3 Insurable Interest: Property

This chapter explains the English common law requirement that policyholders must have a special interest in the subject matter of the insurance, a requirement not found in some other comparable countries.

3.1 Introduction

The insured must have an interest in property, the subject-matter of insurance; if there is no interest, the insurance cannot be enforced, but courts are reluctant to reach that conclusion as regards commercial transactions.[24]

3.1A Groups of cases

According to *Feasey*, a leading decision,

the main group consists of "cases where the court has defined the subject-matter rather strictly as an item of property; …and where thus there must be an interest in the property – real or equitable – for the insured to suffer loss which he can recover under the policy".[25]

However, another group consists of cases "in which the court has recognised interests which are not even strictly pecuniary",[26] an important example being that of a building sub-contractor with all risks insurance in respect of the site.

3.1A1 Who must have the interest

This must be the person who made the contract of insurance, or an assignee of the contract.[27] Probably, also any person who, although not able to enforce the insurance contract, is likely to benefit indirectly from it, such as tenants who benefit from insurance taken by their landlords.[28]

3.1A2 The Subject-matter of the insurance

The subject-matter, the property, must be precisely defined. In most cases there is little difficulty, with the exception of profits insurance and liability insurance.

a) *Liability insurance*

Liability insurance is the insurance of the wealth, the 'patrimony', of the insured against awards of damages.

b) *Profits insurance*

In the past merchants were permitted to insure trade profit– money they had not yet earned. To answer objections, a prominent judge (Lord Eldon) opined that the subject-matter of the insurance was the thing expected to generate the profit.

For example for freight: the subject-matter of the insurance is the ship.[29]

3.1A3 Extent

A person may have an insurable interest, even though its extent is hard to quantify.[30] Moreover, more than one person may have an insurable interest in the same property.[31]

4 Third Party Rights

This chapter explains when and why a third party, a person who is not a party to the insurance contract, may benefit from it, in particular by enforcing it.

4.1 Introduction

In spite of the general rule that nobody may enforce a contract to which he is not a party ('privity' of contract), some exceptions are to be found in agency (below 4.4), trust (4.3A), commercial trust (4.5), the Married Women's Property Acts 1870 and 1882 (4.3B), the Third Parties (Rights Against Insurers) Act 1930 (4.6), the Third Parties (Rights against Insurers) Act 2010 (4.7), the Road Traffic Act 1988 (4.8) and, in particular, the Contracts (Rights of Third Parties) Act 1999.

4.2 The Contracts (Rights of Third Parties) Act 1999

Section 1(1) confers a right of enforcement on a "third party": a person who has been expressly identified.

4.2A Identification

Identification means "identified in the contract by name, as a member of a class or as answering to a particular description".[32]

For example, a reference to "subcontractors" in the main contractor's property or liability insurance.

Again, a 'loss payable' clause, whereby the money must be paid to a named third party, such as a creditor of the insured.

4.2B Enforcement

Enforcement means that "there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been party to the contract",[33] and the enforcement of any term which "purports to confer a benefit on him".[34]

4.2C Alteration of contract terms

Contracting parties are free to vary or cancel a term conferring a right of enforcement, unless (a) the third party has communicated his assent to the term to the insurer, (b) the insurer is aware that the third party has relied on the term, or (c) the insurer can reasonably be expected to have foreseen that the third party would rely on the term (and he has in fact relied on it).[35]

4.3A Express Trust

For an express trust there must be (a) trust property, (b) persons identified as beneficiaries, and (c) a clear intention to create a trust. Technical language is not necessary.

For example, the benefit (the money) is expressed to be held "in trust for X".

4.3B The Married Women's Property Acts 1870 and 1882

This Act enabled "a trust to be created appropriating policy moneys[36] for the spouse or children of the insured[37] without his going to the trouble of executing a trust deed". It focused on husbands, and was replaced the Married Women's Property Act 1882, s.11, which extended the provision to insurance by a wife in favour of her husband.[38]

4.4 Agency

A person for whom an agent, acting within the scope of his authority, has contracted insurance is entitled to enforce it, even though the insured is unnamed or even undisclosed as the principal, for whom the agent is acting.[39]

4.5 Commercial trustees

These are persons with an insurable but limited interest in goods; they may insure those goods and, in the event of loss, recover the full amount of their own loss, and hold the balance on trust for others with an interest in the goods.

In the leading case,[40] cigarettes were stolen from a carriers' vehicle. The carrier had insured the cigarettes in its own name, not as agent of the owners. The carrier had suffered no loss (and was not liable for the theft), but the House of Lords held that it could recover the full amount of the loss, holding the money on trust for the owners. [41]

Commercial trusts are recognised where the 'trustee' (a) has an insurable interest in the property; and (b) is in such relation to the property that it is 'commercially convenient' that he should be able to insure and recover for others.

For example, constructors all-risks (CAR) insurance commonly extends not only to the head-contractor but also to sub-contractors working on the construction site.

4.6 The Third Parties (Rights Against Insurers) Act 1930

This provides that, if a person is (a) insured under a contract of insurance against liability to third parties and (b) becomes bankrupt, his rights against the insurer in respect of liability that he has incurred to a third party are "transferred and vested in the third party to whom the liability was incurred".[42]

The effect of the transfer is a statutory assignment of the insured's rights in respect of the particular claim;[43] and the third party has a direct action against the insurer (but the insured is still able to claim in respect of his own loss). However, to achieve this, the third party must first establish the claim in proceedings against the insured.[44]

4.6A Information

The insured is obliged, at the request of the third party, to give "such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred".[45] However, what a third party claimant really needs to know is "whether the person against whom he is making a claim is insured".[46]

4.7 The Third Parties (Rights against Insurers) Act 2010

The 2010 Act (due to enter in force in late 2015) replaced the Act of 1930, and was designed to remove some of the legal obstacles that had become apparent since 1930. In particular, the third party will be able to commence a single action to establish both the liability of B, the insured, as well as the potential liability of A, B's insurer, to pay the indemnity in question, without, as before, bringing separate sequential actions against them.

4.7A Insolvency

Insolvency, a precondition of the transfer of rights, varies according to whether that person is a company or an individual.[47]

4.7B Defences

Certain defences to third party actions have been modified or nullified.

For example, the starting date (for the enforcement of rights) is the date when proceedings were commenced against B, the insured, whether or not the proceedings were completed or the limitation period relevant to that action has expired.[48]

4.8 Road Traffic Act 1988

A person "must not use [or permit to be used] a motor vehicle on a road or other public place unless there is in force in relation to the use of the vehicle by that person such a policy of insurance…in respect of third party risks" insuring "such person…in respect of any liability which may be incurred by him… in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road or other public place in Great Britain".[49]

4.8A Rights of victims

A person, injured in a motor vehicle accident or whose property has been damaged, has a direct right of action against the insurer of the vehicle concerned,[50] provided that he (a) has a cause of action against the insured,[51] and (b) gives sufficient notice to the insurer.[52]

4.8B Ineffectual Defences[53]

Ineffectual are any restrictions by reference to:

a) The age or physical or mental condition of persons driving the vehicle.
b) The condition of the vehicle.
c) The number of persons that the vehicle carries.
d) The weight or physical characteristics of the goods that the vehicle carries.
e) The times at which or the areas in which the vehicle is used.
f) The horsepower or cylinder capacity or value of the vehicle.
g) The carrying on the vehicle of any particular apparatus.
h) The carrying on the vehicle of any particular means of identification; and
i) Failure to give the insurer notice.

Also without effect are requirements that the driver have a driving licence, or that the vehicle had not been stolen.[54]

4.8C The Motor Insurers Bureau (MIB)

4.8C1 The Uninsured Drivers Agreement 1999.

The MIB has undertaken to indemnify the victims of uninsured drivers,[55] unless the apparent victim was being carried voluntarily,[56] and knew or ought to have known that

i. the vehicle had been stolen or unlawfully taken,
ii. the vehicle was being used without insurance of the relevant liability.[57]
iii. the vehicle was being used in the course or furtherance of a crime, or
iv. the vehicle was being used as a means of escape from lawful apprehension

4.8C2 The Untraced Drivers Agreement 2003

Provision is made in this Agreement for the payment by the MIB of compensation for personal injury, and damage to property, subject to certain conditions not unlike those applicable to those for uninsured drivers (above 4.8C1).

5 Agency

An important role in the world of insurance is played by agents who buy and sell insurance. This chapter explains the legal consequences of agency, in particular the legal rights and duties of the insurers and the insured, that follow from the activity of agents in the insurance market.

5.1 Introduction

This chapter focusses mainly on rules of agency affecting insurance applicants. General rules of agency also apply to agents for insurers.

5.1A Agents and Regulators

In 1999 one could say that an "insurance broker is an agent for the insured or would-be insured [and not] the agent of the insurer in the relevant transaction".[58] However, since 1999 the common law has been overlaid by rules made under the Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, and we now speak of insurance intermediaries: those who are mainly occupied with dealings between buyers and sellers of insurance. Moreover, the Financial Conduct Authority (FCA)[59] and the Prudential Regulation Authority (PRA) also make relevant rules (below 5.4).[60]

5.1B Incidental Agents

Solicitors, and accountants to retail insurance as part of a package, in which insurance is not the main element; they must be independent intermediaries or represent one insurer only.[61]

5.1C Dual Agency

In practice an insurance intermediary sometimes acts for both insurer and insured, for example, to contract interim insurance for the insurer concerned.[62]

5.2 Authority

Authority to contract may be actual (below 5.2A) or apparent (5.2D).

5.2A Actual Authority

Actual authority may be express or implied.

Thus if applicant A instructs intermediary C to make a particular application for insurance for A, C has express authority to contract on that basis, if possible; and

C is implicitly authorised to agree the precise form and content of the policy, to disclose matters material to the risk,[63] and to give all information necessary for obtaining the cover.

5.2B The Authority of Local Agents

Local agents do not usually have actual authority to make (definitive) contracts of insurance; however, by implication, they often have authority to issue interim insurance;[64] and usually they are agents to transmit applications to the insurer's head office.

5.2C Authority at Lloyd's

At Lloyd's, the active underwriter of a syndicate[65] has authority to contract all the ordinary business of an underwriter at Lloyd's,[66] subject to the terms of his appointment on behalf of the syndicate.[67]

5.2D Apparent Authority

An intermediary lacking actual authority but held out (by an applicant) as having authority, binds (the applicant), if it is reasonable (for the insurer) to rely on the appearance.

5.2D1 *Held Out*

This means represented as having authority by a person having actual authority;[68] usually the applicant.

5.2D2 *Reliance*

Reliance must be reasonable. For example reliance is not reasonable where the insurer has notice from previous dealings that the intermediary lacks authority.

5.3 Ratification

A contract made without actual or apparent authority (above) may nonetheless bind an insurance applicant, if later ratified.[69]

5.4 Liability

Intermediaries must act carefully both at common law and according to the statute based rules of ICOBs: below 5.4B.

5.4A Liability at Common Law

The liability of intermediaries under the common law may be in contract, tort or equity.

5.4A1 Contract

Ordinary principles of the law of contract apply. For example, a contract whereby intermediary A arranges specified insurance cover and in return gets the opportunity to earn commission is an enforceable contract. It is a matter of interpretation whether the intermediary has undertaken absolutely to achieve the task (arrange the cover), or to use best endeavours, reasonable care and skill, to that end: usually the latter.

Commonly the terms are based on the Insurance Conduct of Business Rules (ICOBS); if however, an intermediary is unable to obtain cover on the terms desired, it may well be acceptable to obtain cover on the best terms possible. In this regard, however,

i. Intermediaries must choose an insurer licensed to carry on insurance business of the class in question, one reasonably believed to be solvent and able to pay.
ii. Intermediaries are obliged (by ICOBS) to provide "product information", sometimes based on policy content and thus interpretation of the policy.[70]

In any event, intermediaries must disclose to the insurer any material facts,[71] which are known (or should be known) to the intermediary.[72]

5.4A2 *Tort*

For liability in tort a claimant must establish either deceit or negligence.

a) For deceit, the claimant must establish that the intermediary made a fraudulent statement which caused the claimant loss.
b) For negligence, the claimant must establish that the intermediary owed him a duty of care, broke that duty and that the breach of duty caused the claimant economic loss.[73]

i. For a duty of care there must be an assumption of responsibility for the provision of a service, action or advice by a qualified person such as a professional intermediary,[74] to a proximate person, i.e. one likely to rely on that service such as an applicant client, who does indeed rely on it.[75]
ii. Breach and loss: the outcome depends mainly on factors, such as

a) the probability of loss if care is not taken;
b) the amount of loss if care is not taken;
c) the susceptibility of the applicant; and
d) the general practice of responsible insurance intermediaries.

5.4A3 *Equity*

Agents such as intermediaries owe fiduciary duties of equitable origin.[76]

Thus they must not allow themselves to get in a position where their duties to some applicants may conflict with their duties to others;[77] and they must not make 'secret' profits,[78] of which an example is secret commission paid to the intermediary by the insurer.

Intermediaries, in actual or potential breach of duty, may safeguard their position by disclosing the possibility to their principal, the applicant, and obtaining consent.

Among the Core Principles (below 5.4B) now added to the equitable obligations of intermediaries are

Principle 2.1.1.5 requiring them to "observe proper standards of market conduct",
Principle 2.1.1.1 stating that they must conduct their business "with integrity", and
Principle 2.1.1.6 stating that they "must pay due regard to the interests" of their customers such as applicants and "treat them fairly" and, in particular, Principle 2.1.1.8 states that they "must manage conflicts of interest fairly", both between the firm and its customers and between one customer such as an applicant and another.

5.4B Remedies

Intermediaries in breach of contractual and tortious (but not equitable) obligations to applicants, are liable to damages in respect of economic loss caused by the breach. The extent of the damages recoverable depends on the extent of the obligation assumed by the intermediary.[79]

In any event, no action arises until the claimant suffers loss. Thus, when action was brought in respect of insurance that did not pay (because of misrepresentation and non-disclosure by the intermediary), the action accrued when the contract of insurance obtained had become voidable.[80]

5.4B1 *Limitation of actions*

If the action against an intermediary is based on breach of contract, whether or not amounting to negligence, the limitation period is six years from the date on which the cause of action accrued.[81]

If the action brought against an intermediary is based on negligence, the limitation period is not more than "six years from the date on which the cause of action accrued" or "three years from the starting date", whichever period expires later:[82] The starting date is the earliest date on which the claimant "had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action".[83]

5.4B1(a) Knowledge of a possible action

This is, first, knowledge that the claimant has been wronged, knowledge of "such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment".[84]

Second it is knowledge concerning who to sue, knowledge "(a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and (b) the identity of the defendant…".[85]

An example is knowledge from the report of an actuary that the claimant had suffered loss by acting on the defendant's advice, to transfer his pension rights from scheme X to scheme Y.[86]

5.4B Liability under statutory Rules

The relevant Rules are ICOBS[87] and the Core Principles.[88]

5.4B1 *Scope*

ICOBS apply to general (non-life) insurance, except large risks and reinsurance. The Rules draw an important distinction between commercial customers and consumers, being more favourable to the latter.[89]

The Core Principles apply to all authorised firms requiring them to meet certain standards.

6 Contract Formation

This chapter explains the rules relation to the formation of insurance contracts, evidently an essential area of study, where the rules are similar to the general rules of contract but are different in certain significant respects.

6.1 Applications

The process starts with applications for insurance (aka proposals) which, although apparently drafted by the applicant, are frequently made with the assistance of the insurer's agent on a form drafted by the insurer but signed by the applicant.

6.1A Misstatements

If the application contains misstatements, the effect may depend on who is responsible for them.[90] Better is the significance of signature: applicants are bound by signature and on this basis responsible for any misstatements. Exceptions to this rule in past cases were where the applicant was vulnerable through

a) inability to read,[91]
b) inability to understand the questions;[92] or
c) where the applicant was induced to believe that he had disclosed all that was required.[93]

Today, however, case (a) is rare, and (b) and (c) are confined respectively to (i) the meaning of questions about health,[94] and (ii) the scope of the cover.[95]

6.2 Contract conclusion

A contract is concluded if and when an application is accepted by the insurer.

6.2A Acceptance

Acceptance is definitive when the insurer indicates that it is ready to be bound by what is stated or referred to in the application.

6.2A1 *The Insurance*

The insurance agreed must be certain in content: unambiguous and complete.[96] To be complete essential terms must have been agreed, indicating the parties, the subject- matter at risk, the kind of risk and the amount of insurance; also terms essential to the business efficacy of that kind of insurance contract, such as the duration of cover, which, if not expressed, will be readily implied.

For example, for fire insurance the period will be a year, and, where the risk is a standard risk, the premium payable will be the market rate.[97]

6.2A2 *Open Offer*

To be accepted the offer must still be open. Offers end

i. by rejection;
ii. where unaccepted within a time for acceptance stipulated in the offer or from the passage of time,[98] or
iii. where the offer is conditional, and the condition has not been fulfilled.[99]

For example, acceptance of health insurance applications is conditional on no interim change in the health of the applicant.

6.2A3 *Intention*

Acceptance must be genuine, unequivocal, and unconditional, and then communicated to the other.

6.2A3(a) *Genuine*

Acceptance must be consistent with the offer.

For example, an applicant sought fidelity insurance on the manager of their Paris jewellery store and the insurer 'accepted' by sending a policy; but a claim failed because the policy contained terms not found in the application.[100]

6.2A3(b) *Unequivocal*

Acceptance must be unequivocal, but no particular form is required;[101] it may be in speech or in writing, and it may be implied from conduct.[102]

For example, the delivery of a policy of the kind applied for.

6.2A3(c) *Communicated*[103]

Acceptance is not effective until received by the (applicant) offeror,[104] unless the right to acceptance has been waived by the offeror.[105]

6.2B Contracting at Lloyd's

For an applicant,[106] a broker prepares a slip (of paper) recording the essentials of the insurance sought, then takes the slip around Lloyd's seeking 'subscriptions' from underwriters.[107] Once enough subscriptions' have been obtained to cover the risk, a policy is issued.[108]

6.2C Interim Insurance

Interim insurance, often recorded in a cover note, is to give insurers time to assess the risk and decide whether to cover it, while offering the applicant temporary cover.

6.2C1 *Authority*

Interim insurance is granted by an authorised agent. For example, a person in possession of cover notes from the insurer has implied (or apparent) authority to grant interim cover.[109]

6.2C2 *Terms*

It must contain essential terms, premium, and amount.[110] If no period is stated, it will be implied that it is for a reasonable time (until the application has been accepted or rejected). Other terms may be implied

A common example is interim motor cover: cover on a new car is implicitly on the old terms.

7 Premium

To get insurance cover people must pay. This chapter explains the rules of payment in what is a sensitive sphere of commercial activity.

7.1 Introduction

Premium, the payment for insurance,[111] may be paid when cover commences or by instalments during the period of cover.[112]

7.1A Where Payable

In principle payment must be at the insurer's head office.[113] In practice, however, payment to an agent somewhere else is usually sufficient.

7.1B How Payable

In cash, unless payment by other means, notably by cheque, is expressly or implicitly authorised – usually the case.[114]

7.1C When Payable

Generally, premium must be paid within a reasonable time of contracting. Late payment entitles the insurer to repudiate the contract only if punctuality is a condition.[115] Moreover, life policies often refer to 'days of grace', an extra period of time to pay premium.[116]

7.2 Non-payment

Premium due is an outstanding debt. Many policies provide that, until premium is paid, there shall be no cover.

Thus, in one (early) case it was no excuse that the insured was too ill to pay the premium.[117]

7.3 No return of premium

If cover ends prematurely, the insured has no right to a return of any premium, because the danger of loss varies from time to time, and "it would be extremely difficult…to apportion the premium".[118]

To this rule, there is one exception: divisible risk.

Thus, if insurance commences for property A but not for property B, the insured may recover premium for B but not for A.[119]

8 The Policy

This chapter explains the standards terms of a typical insurance policy and their interpretation. Such is the variety of policies in England that the rules of interpretation are important.

8.1 Introduction

Insurance contracts are usually written in an insurance policy. The reader must ascertain its content, its terms, and then their meaning, a question of evidence and, later, of interpretation.

8.2 Content

If there is a document that contains all the terms one would expect and which looks significant, it is probably an insurance policy,[120] and there is a presumption that that is the whole of the contract; and evidence will not be admitted to add to, vary or contradict it (the 'parol evidence' rule).[121]

The presumption is rebuttable, thus there are exceptions:

8.2A No contract

Parol evidence will be admitted in support of the contention that (i) no binding contract was intended, (ii) the contract is voidable[122] or (iii) the contract is void.[123]

8.2B Special meaning

Evidence is admissible to show that policy wording is used in a special sense.

Examples include "all risks" (below, chapter 9.3D) and "riot" (below, chapter 10 2C4),

8.2C Trade custom

Evidence of trade custom will be admitted to add to (but not contradict) the contract,[124] if the custom is widely accepted.

8.2D Rectification

If the policy does not accurately record the terms agreed, the court may admit parol evidence of those terms, and then rectify the policy accordingly.[125]

8.3 Interpretation

Words are presumed to have their natural and ordinary meaning, in context.[126]

8.3A Ordinary meaning

Ordinary meaning may be ordinary

a) as understood by ordinary lawyers,[127] or
b) as understood by ordinary laymen (non-lawyers).[128]

8.3B Context

8.3B1 *Legal Context: Precedent*

Published precedent establishing a special meaning is respected.[129]

For example, the meaning of 'consent' in criminal law.[130]

8.3B2 *Usage*

Usage is respected, such as the language of science or of a particular trade.

For example, the language of the London insurance market.[131]

8.3B3 *Documentation*

The policy context is a series of circles: the phrase, the sentence, the paragraph. The meaning of a word or phrase may be affected by its place in the policy.

For example, "lock"in an insurance warranty concerned with jewellery left in a car meant a lock providing greater security than ordinary car locks.[132]

Again, a word will be construed as similar to other words in the same phrase or sentence. For example, "flood" in "storm, tempest or flood" means something violent, sudden and large.[133]

Again, the express mention of one thing may imply the exclusion of another.[134]

8.3B4 Outside the Policy: The Background

The effect of *ICS*[135] is that the surrounding circumstances may be looked at not only to clarify words which are ambiguous but also to provide a perspective from which to rewrite them, if the parties did not really mean what they appear to have said, provided that the evidence of the surrounding circumstances is "reasonably available" to both parties.[136]

This includes past trade dealings, the application for the insurance and, in the case of renewal, the contract which is being renewed,[137] but not document drafts.[138]

8.3C Purpose

A clause will be given a commercially sensible interpretation in the light of parties' apparent purpose.[139]

Thus, if the "object of the contract is to insure against accidental death…[it] must not be construed so as to defeat this object".[140]

8.3D Ambiguity

If the primary rules (above) still leave ambiguity, courts admit extrinsic evidence of party intention or resort to subsidiary rules of construction: the rule of reasonable expectations (8.3D1) or, especially, construction *contra proferentem* (8.3D2).

8.3D1 Reasonable expectations

Arguably, English courts seek to fulfil the reasonable expectations of the parties, a quest that comes from case-law in the USA.[141]

8.3D2 Construction contra proferentem

In case of doubt, wording is construed against the party who proposed it,[142] usually the insurer.

8.3E Absurdity

If the primary rules of construction (above) would give a meaning that is absurd, courts look outside the policy to the objects of the policy, or to the dictates of "realism" or of "business necessity" to give a sensible meaning.[143]

9 Cover

The purpose of this chapter is to introduce the student to the many kinds of insurance cover that are possible and to enable the student to recognise and understand them.

9.1 Cover and Loss

On the occurrence of the insured event (below 9.3), the insurer promises to pay money to the insured, a promise called cover, which has three important features:

First, it concerns loss (below 9.1A): destruction, damage (9.1B), death, or injury. Second, it identifies the subject-matter of the insurance, usually a person or property (9.2). Third, it specifies the risk insured against: for example fire (9.3B), accident, or death (9.3A).

9.1A Loss

Insurance loss is either deprivation loss (below 9.1A2) or financial loss.[144]

9.1A1 *Financial loss*

This is any loss which leaves the insured financially poorer than before.

The loss must first occur during the period of cover, although the full extent of loss is not yet apparent. However, if there is no loss during that period, there is no right of recovery, however inevitable later loss might seem to be.[145] Moreover, recoverable loss does not extend to consequential loss.

Thus, when a claimant bookseller was accidentally injured, unable to sell books and lost income, it was held that that was not recoverable under his accident policy.[146]

9.1A2 *Deprivation loss*

This is where the insured loses possession of something, and there is no reason to suppose that he will be able to get it back in substantially the same condition.[147]

9.1B Damage

This is where there is a (measureable) change for the worse in property insured,[148] within the contract period.

Thus, fish, which is fit for immediate consumption but with a raised temperature shortening its shelf life, may be already damaged, if it is wanted not for immediate consumption but for sale and consumption abroad.[149]

9.1B1 *The Time of damage*

Imminent damage is not damage until it actually occurs.

Thus, when glass in the roof of a railway station cracked, the glassmaker's liability policy did not apply until the roof fell and damaged things below.[150]

9.1C Proof

9.1C1 *Generally*

A claimant must prove loss covered by his insurance, and in the case of indemnity insurance, the extent of the loss: he must prove (on the balance of probabilities) that the loss was caused by an event covered by the policy.

An insurer defending with a contract exception must prove the operation of that exception – on the balance of probabilities; but that onus will be heavier if the defence includes allegations of fraud or wilful misconduct by the insured, such as arson.

In the case of fire, for example, it is usually enough for the claimant to prove that his property was damaged by fire; and it is for the insurer to prove that the fire -was caused by an exception, such as riot or arson.[151]

9.1C2 *Cf Broad exceptions*

If, however, the exception qualifies the whole scope of the cover, the claimant cannot make a case against the insurer, without proof not only of the peril (e.g. fire) but also the *non*-operation of the exception.

For example, if a fire policy contains an 'excess' of £100, the claimant must prove loss exceeding £100.

9.2 Subject-matter

9.2A People

The subject-matter of insurance such as life insurance, accident insurance and health insurance is people.

9.2B Property

The subject-matter of insurance such as fire insurance, and theft insurance is property, moveable or non-moveable property (land), as the case may be.

9.3 Insured events

Insured events are the occurrence of risks against which people seek indemnity or are covered.

9.3A Life and Death

In the case of life insurance, the relevant risks are not only death but also long life, where the object is to have enough money to pay for services that make old age less painful or inconvenient.

9.3A1 Proof

Death is normally proved by a certificate from the responsible state agency.[152] There must be no reason to suppose it was suicide (or death by any other cause not covered by the policy); however, there is a presumption that death was accidental.[153]

For example, it applied when a man was found drowned in a river in Scotland.[154]

9.3B Fire

9.3B1 *Definition*

Fire damage means damage by ignition (with visible flame),[155] but also extends to

a) damage inflicted to prevent property being damaged by fire.[156]

   Thus, a cargo of cork damaged by water in a successful attempt to prevent a nearby fire spreading to the cork was covered by fire insurance.[157]

b) the immediate consequences of a fire such as smoke damage to the same property,[158] damage inflicted by falling buildings,[159] or the effects of firefighting.[160]

9.3B2 *Causes*

Property is covered whatever the cause,[161] including policyholder negligence,[162] but not damage resulting from an explosion (below 9.3C) or arson.[163]

9.3B3(a) *Arson*

Arson by a third party is covered[164] but fires lit by the insured are not, apart from exceptional cases:

a fire break to prevent the spread of a large fire, and

a 'friendly' fire.

9.3B3(b) Friendly Fires

A 'friendly' fire is one started deliberately but with unintended effects.

Thus, when a lady lit a fire at home, forgetting jewellery that she had hidden in the fireplace, the damage to the jewellery was covered.[165]

9.3C Explosion

9.3C1 *Fire causing explosion*

Policies commonly exclude explosion, but if a fire leads *inevitably* to explosion, the damage by explosion may be covered as part of the fire; much depends on interpretation of the policy.

For example, when a small fire led to a big explosion and more fire, in a damage ratio of 1:12:6, only the claim in respect of the first fire succeeded.[166]

9.3C2 *Explosion causing fire*

If an explosion causes a fire, the fire is treated as part of the explosion and is not covered by fire insurance; it can be insured separately.[167]

9.3D All Risks insurance

All risks insurance is cover against any accidental loss (below 9.D1),[168] that it is lawful to insure (9.3D2).

9.3D1 *Accidental loss*

Loss is accidental unless it was inevitable (at the time of contracting the insurance).[169]

Thus, not accidental are depreciation,[170] and 'inherent vice' which means some defect latent in goods which "by its development tends to the injury or destruction" of the thing.[171]

9.3D2 *Lawfulness*

Loss or damage caused by wilful misconduct,[172] including recklessness,[173] on the part of the insured is unlawful and cannot be covered.[174]

9.3E Liability Insurance

9.3E1 *Scope*

This covers liability for loss or damage (LD) to another person, usually LD caused by the negligence of the policyholder.

Commonly 'business risks' are excluded: for example, LD caused by the deficient quality of the policyholder's products or of the policyholder's work.[175]

9.3E1(a) *Loss*

The insurer is obliged to pay when the insured's liability to an injured person "has been established either by judgment of the court or by an award in arbitration or by agreement".[176] If liability is disputed, the issue is usually dealt with in a 'QC Clause'.[177]

9.3E1(b) *Defence*

The insurer may be entitled to defend the insured against claims but has generally no duty to do so, unless specified in the policy.[178]

The cover often extends to the costs of the insured's defending a claim,[179] but this may be limited to costs incurred with the consent of the insurer.

9.3E1(c) *Conflicts of interests*

A conflict may arise in the face of a possible judgment in excess of policy limits. The insured's interest will usually point to settlement, even up to the policy limits, since the insured has nothing to gain and much to lose by litigating rather than settling. The insurer may be inclined to litigate, since doing so will not expose it to liability greater than the cost of settling the case.[180]

9.3E2 *Claims made insurance*

Alternatively, the loss covered is stated to be (limited to) the consequences of a liability claim against the insured.[181]

9.3F Controversial Cover

9.3F1 *Terrorism*

Acts of terrorism have been hard to define; it has been stated they must at least have "unity in relation to cause, locality, time and…the circumstances and purposes of the persons responsible",[182] of which the most important are locality and time.

Thus, the destruction of the twin towers in New York on 11 September 2001 was terrorism but an act distinct from the similar attack that day in Washington.

9.3F2 *Long tail illness*

Identifying the time of injury, usually simple in motor accidents, may be difficult when the injury is caused by disease latent for many years, such as asbestosis. English law (below 9.3F2 (e)) shadows USA law, in which possibilities are.

9.3F2 (a) *Exposure*

According to the 'exposure theory', injury is when the first tissue damage occurs as a result of inhalation of asbestos fibres.

9.3F2 (b) *Injury in fact*

This point, between exposure (above (a)) and manifestation (below (c)), is when injury actually occurs.[183] Objections to a rule on this basis are the difficulty of proving when injury occurred and that it requires a case-by-case study of each injury, with little value as precedent.

9.3F2 (c) *Manifestation*

It being difficult to prove when injury occurred, for a while manifestation became the preferred theory.[184] One objection to that was refusal to renew insurance when a manifestation suggested that a flood of claims was likely.[185]

9.3F2 (d) *Triple trigger*

All these difficulties led to the 'triple trigger' rule[186] the liability of any insurer on risk from the time of exposure to the time of manifestation.

9.3F2 (e) *English law*

The triple trigger rule was rejected in England because the court could "see no need…to adopt [a] theory… adopted in the United States avowedly for policy reasons in relation to the vastly greater numbers of asbestos-disease sufferers in that country".[187]

In one case, however, where a claimant could not establish when he inhaled the asbestos and hence which employer (and insurer) was on risk, it was held enough that a particular employment 'materially contributed' to the risk of the claimant's getting the disease; and that the insurer then on risk was liable to pay.[188]

'Claims-Made' cover (above 9.3E2) is the cover which English insurers prefer to offer: they know by the end of the insurance period what claims have been made during the period, and hence their potential liability; and it avoids the uncertainty of long-tail claims.[189]

A claim means a claim for money,[190] made when the insured receives notification from a third party of a potential claim.[191] Much depends, of course, on the wording of the policy clause.[192]

10 Exceptions To Cover

This chapter seeks to explain the role of exceptions, which qualify or limit cover, with illustration by reference to some leading current examples of exceptions.

10.1 Introduction

Insurance cover may be defined by specifying the risks covered; or by stating it broadly subject to exceptions.

For example, travel insurance worldwide except North America.

Exceptions are sometimes referred to as terms descriptive of risk, or exclusions, and must be distinguished from terms referred to as warranties (below chapter 11).

10.2 Leading Exceptions

10.2A Recklessness

Unless expressly excepted, negligence by the insured (or his staff) is presumed to be covered,[193] but damage they cause recklessly is presumed to be excepted.[194]

10.2B Public policy exceptions

10.2B1 *Intentional acts*

Loss inflicted intentionally, notably murder,[195] is unlawful and cannot be covered.

10.2B2 *Criminal acts*

Criminal acts, whether intentional or not, cannot be covered.[196]

10.2C Social and political exceptions

10.2C1 *War*

'War' is often a policy exception but not one intended in the sense of international law;[197] consequently policies often contain detailed definitions.[198]

10.2C2 *Civil war*

This exception refers to a conflict internal to a state: forcing "changes in the way in which power is exercised, without fundamentally changing the existing political structure".[199]

10.2C3 *Civil commotion*

Civil commotion refers to something less than a civil war (above 10.2C2), but "something considerably more serious than a leaderless mob".[200]

10.2C4 *Riot*

"Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot".[201]

10.2C5 *Terrorism*

Terrorism is sometimes covered (above 9.3F1) and sometimes excepted, but there is no generally agreed definition. For example, in EU states the definition must include acts committed with the aim of seriously intimidating a population, unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.[202]

10.3 Unenforceable Exceptions

According to an EC Directive,[203] unfair terms, including unfair exception clauses, may be struck out; but this only applies to consumers' insurance. A consumer is "any natural person who…is acting for purposes which are outside his trade, business or profession":[204]

Unfair terms include (a) those in the 'grey list' of terms,[205] a list that is is indicative and non-exhaustive; or (b) terms not contracted in good faith.[206]

11 Warranties

The purpose of this chapter is to identify warranties in a policy, to understand their significance and why they are controversial.

11.1 The Nature and Function of Warranties

A warranty is a term, observance of which is a condition precedent to the commencement or continuation of cover.[207]

Under an insurance contract, the obligations of the insured are of three kinds. First, payment of premium. Second, performance of procedural conditions, such as notice of claims, to make the main parts of the contract work. Third, observance of any warranty, usually an undertaking about a factor affecting the risk or a promise that that factor will not be changed (a promissory warranty – see below 11.4).

For example, in hull insurance from the UK to Canada in January, a promise that the transit will be "in a seaworthy ship".[208]

A warranty must be stated in the policy (oral warranties are unusual), but courts do not construe policy terms as a warranties unless it was clear that that was the intention of the parties.[209] In particular, if the term is concerned with a *temporary* increase in the risk, it is not a warranty (but usually an exception); but a term is concerned with a risk that is (or might be) a *permanent*increase in the risk, is a warranty.

For example, a goods vehicle insured to operate abroad 'except in the Ukraine', is uninsured when in Kiev but cover resumes when it returns to Germany. However, a promise to maintain a vehicle in good condition and have it serviced twice a year is likely to be a warranty.[210]

Once a warranty has been broken, at common law cover ended, even though the vehicle had been made roadworthy,[211] although the consequence is now less severe (see below 11.2).

11.2 The Absolute Nature of Warranties

At common law, breach of warranty entitled insurers to terminate insurance, even though the breach was not material (connected) either to the risk or to the loss claimed.[212]

The effect of section 10(2) ff is that

a) breach of warranty will not discharge but suspend the insurer's liability: the insurer will be liable to pay claims that arise after the breach of warranty has been remedied – if that is possible – a matter dealt with in section 10(5); and
b) the insurer will still be liable to pay for losses before the breach; and to perform other duties due before breach, such as arbitration of earlier claims.

11.3 Construction of Warranties

The scope of warranties is determined by construction. General rules of construction apply, such as reference to the purpose of the warranty and the context in which it was promised. This is true, in particular, of terms based on an applicant's answer to questions put by the insurer.

Thus, in 1918 a warranty based on the life insurer's question about "sober and temperate habits" was understood to refer to alcohol but not to what we now call hard drugs.[213]

Again, a provision in a manufacturer's liability policy, that the insured "shall take reasonable precautions to prevent accidents", was construed as an undertaking to be observed not only by the manufacturer but also by the manufacturer's employees.[214]

Note in particular that, if, in response to a question, an applicant states that he 'believes'something to be true, that is a statement of opinion rather than fact; its truth is judged by his state of mind, it is untrue only if he does not actually believe it.[215]

11.4 Continuing (Promissory) Warranties

A continuing warranty is one applicable not only to circumstances when the contract is made but also to circumstances arising later; but courts construe against this.

Thus, in an application for motor insurance, a negative answer to "Will the car be driven by any person under 25?" was construed as a statement of the applicant's intention at the time of his application, rather than what he allowed in the future.[216]

However, in burglary insurance a term may state that the cover ceases if the building is unoccupied for more than, say, 30 days. This will be applied but 'unoccupied' will be construed with reference to the nature of the building or the occupants' absence.

Thus, a church is not unoccupied because people are there only on Sundays; and a dwelling house is not unoccupied if the occupants are absent for reasons of health, pleasure, or business, for reasonable periods.[217]

11.5 Breach of Warranty

The onus of proving breach is on the insurer.[218]

For the consequences of breach see above 11.2.

12 Misrepresentation

Contracts of insurance are set aside if, at the time of formation, one party, in practice usually the insurer, was induced to contract by the other's misrepresentation about the risk to be covered. This is a common problem and this chapter sets out the rules.

12.1 Introduction

If a party to an insurance contract is induced to make it by misrepresentation, it is voidable.[219] Proof must be by the party alleging the misrepresentation, usually the insurer.

An operative misrepresentation is a representation (below 12.1A) of fact (12.1B) by a party concluding a contract (12.1C), which is untrue (12.1D). A misrepresentation made innocently is a misrepresentation nonetheless – although innocence affects the remedy.

12.1A Misrepresentations

A misrepresentation is a false representation, in speech, writing, or by conduct; in general silence alone cannot be a misrepresentation – except in the law of insurance, where it is important and called non-disclosure.[220] Moreover, if the insured is a consumer, answering questions raised by insurers in the proposal form, he is only required "to take reasonable care not to make a misrepresentation" to insurers.[221]

Failure to answer a question in an application is not a 'No' answer to the question.[222]

12.1B Fact

A statement of fact is a statement about the present or past, to be distinguished from a promise, or a statement of opinion.[223]

a) *Promise*

A promise is a statement about what is intended to be done in the future.

For example, an applicant for theft insurance who states that certain precautions, such installing locks, will be taken, is not stating a fact, unless, he does not have that intention: a misrepresentation of his intention.[224]

b) *Opinion*

Opinion is a statement which, as it appears to others, the applicant does not have sufficient information to justify.[225]

Thus, an applicant's statements about his health is opinion, unless he is a doctor; but an expert's statements are statements of fact even though he uses words such as "in my opinion".[226]

Note that some application forms require (non-commercial) applicants to answer questions "to the best of your knowledge or belief". In a leading case about household insurance,[227] the applicant undervalued the goods there, including his mother's jewelry. The insurer argued that his statement was false because it implied that he had reasonable grounds for it, which he did not. The court, however, held that the correct test was whether the applicant had "some basis" for the belief, which he did have, having stated the value put on his mother's jewelry by his father.

12.1C Untruth

Whether a statement is true or not depends on interpretation, which courts undertake with common sense, objectivity and in context.

a) *Common Sense*

Asked whether he has consulted any doctors, an applicant does not have to remember and state all those ever consulted; it is enough to name those that were consulted recently and on serious matters.[228]

b) *Objectivity*

Objectivity requires that any ambiguous statements be given the meaning which the applicant knew or should have known the insurer would put upon them.[229]

c) *Context*

The context is principally the document in which the statement appears.[230]

Thus, a statement that property has not been insured before refers only to the property mentioned in the application, and not to other property belonging to the applicant.[231]

Moreover, it follows from (a) and (b) that as regards.

d) *Truth*

i. Truth is tested at the time of contract; but if true then but it becomes untrue before the contract is concluded, it must be corrected.

Thus an applicant for life insurance who states that he is well but then falls ill, must inform the insurer.[232]

ii. A "representation as to a matter of fact is true, if substantially true…i.e. if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer".[233] However, a statement literally true may be untrue because of what is left unsaid.

For example, an applicant asked about previous fires mentions one but not the others.

12.2 Inducement

Except in the case of fraud,[234] a misrepresentation is without effect unless it materially induces the insurer to contract.

12.2A Materiality

Material inducement means that the statement would affect the judgment of a reasonable man.[235]

For example, excessive valuation of the property to be insured "not only may lead to suspicion of foul play, but has a direct tendency to make the assured less careful".[236] So, this may entitle the insurer to avoid (rescind) the contract, whether or not any insured loss has occurred; and if it has, whether or not there was any connection between the misrepresentation and loss.[237]

12.2B Inducement in fact

Not only must the representation be material (above, 2A), and thus likely to affect to affect a reasonable man, it must have induced the actual recipient (usually the insurer) to contract. However, if it is *likely* "to induce him to enter into the contract, it is an inference 'of fact' that he *was* induced by the representation to enter into it".[238] This affects the onus proof. Exceptions to the requirement of actual inducement are

i. where the representation did not reach target (usually the insurance company).

   A recent case held, however, that a relevant misrepresentation had been made, even though the insurer had a computer system to process incoming information, and there was no consideration of the information by a human being.[239]

ii. where, although aware of the (mis)representation, the insurer does not allow it to influence its judgement.

12.2C The Degree of Inducement

There are three possibilities.

i. Type A is a misrepresentation such that, if the insurer had known the truth, it would not have made the contract at all.
ii. Type B is a misrepresentation such that, if the insurer had known the truth, it would still have been willing to contract, but only on different terms, mainly (but not only) as to premium.[240]
iii. Type C is a misrepresentation such that, although relevant to the decision to contract, if the insurer had known the truth, it would still have made the contract on the same terms.[241]

For a remedy the law usually requires type A or type B.

12.2D The Recipient at Fault

In case of fault, should the risk should be allocated to the representor or the representee?

Certainly, the careless representee will be preferred to the *fraudulent* representor.[242]

In a recent case,[243] the recipient of an innocent misrepresentation about the kind of investments on offer, of which he had considerable experience, failed in his action for damages because he had bought them after giving "no more than a glance" at the offer.

Generally, the outcome depends on which of the parties was better informed or best placed to be better informed.[244]

12.2E Inducement at Lloyd's

Where an operative misrepresentation has been made to a leading underwriter at Lloyd's, 'following' underwriters can (also) avoid the insurance because of the accepted practice of their placing "considerable reliance upon the leading underwriters".[245]

12.3 Remedies

The remedies for misrepresentation are damages, rescission or both. The remedy usually sought is rescission: avoidance of the contract of insurance. These remedies are common to both misrepresentation and non-disclosure and are discussed in connection with the latter in chapter 13.

13 Disclosure

This chapter explains the unusual and sometimes controversial duty of applicants to inform the insurer about the risk for which the applicants seek cover.

13.1 Introduction

The basic rule, broadly the same in all branches of insurance,[246] has been that applicants are obliged to disclose at the time of making (or renewing) the contract of insurance all material information affecting the risk to be insured. The duty, part of the general duty of good faith,[247] was said to be necessary for the protection of insurers.[248] However, from August 2016 the basic rule was replaced by a duty to make a 'fair presentation of the risk'.[249]

Breach of the duty, called non-disclosure or concealment, usually arose when raised by insurers as a defence to a claim. To raise the defence of non-disclosure the insurer had to prove[250] non-disclosure (below 13.2) of material fact (13.3) known to the applicant (13.4), which, if disclosed, would have induced the insurer not to make the contract at all or to make it but on different terms.

Nonetheless, the defence would fail in case of waiver (below, 13.6) where

a) the duty of disclosure was waived by the insurer;
b) it was a matter which the insurer could be presumed to know already;
c) it was a matter which the insurer did not need to know because it diminished the risk.

13.2 Disclosure

If the insurer receives information from a proposer, it will be taken to have understood what would be understood by a reasonable insurer of that kind, and to have drawn the inferences and conclusions that would be drawn by such an insurer.[251] To dispute a claim the insurer must prove *non*-disclosure.

The mode of communication is unrestricted. However, the actual person to whom communication is made must be the right person, as it reasonably appears to the applicant.[252]

Thus, if someone (such as an insurer) circulates contact information (phone number or email address) the implication is that any message sent there by that mode during business hours will be dealt with promptly and efficiently.[253]

Moreover, in one case when a message about a material change in the risk was sent to the insurer's office, "the person who answered the telephone had ostensible authority to accept the message and pass it on" to the right person.[254]

13.2A Time

The purpose of disclosure being to enable the insurer to contract and, if so, on what terms, disclosure is required whenever the insurer has that kind of decision to make: on new insurance (below, 13.2A1), on renewal (13.2A3) or any alteration in current insurance (13.2A2). The corollary is that there is no duty to notify changes of risk at any other times.

13.2A1 *New insurance*

For a new insurance of all kinds, the duty matures when the contract is concluded.[255] However, if, as is common with life insurance, there is no cover until payment of premium, any intervening change in the health of the life must be disclosed to the insurer.[256]

13.2A2 *Altering insurance*

If a change is enough to substantially alter the contract, as with new insurance, all material information must be disclosed[257] at the time of alteration. Otherwise, only information material to the change must be disclosed then.[258]

13.2A3 *Renewal*

Renewal amounts to new insurance, rather than an a change.[259] Thus the applicant must make full disclosure at the time of renewal.

13.3 Material Fact

Material fact is any "circumstance which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk".[260] A 'prudent insurer' is a reasonable insurer in the relevant section of the insurance market.[261] Insurer's evidence of what is prudent is carefully scrutinised by the court.[262]

The fact, which must be disclosed, must be distinguished from opinion, which is a statement of 'fact' which, as it appears, the maker does not have enough information to guarantee.[263]

However, an 'opinion' may be regarded as factual and induce a contact because it is expressed by an expert, such as a doctor.[264] Moreover, where an applicant is being prosecuted for a crime: the opinion of the prosecutor is of considerable interest to the insurer being asked for insurance and must be disclosed.[265]

Note that if the insured is a consumer, he is only required to answer questions raised by the insurer in the proposal form, and then only "to take reasonable care not to make a misrepresentation" to the insurer.[266]

13.3A The Degree of Influence

The degree of influence must have been such that, if the insurer had known the truth, the insurer would not have concluded the contract at all or would only have done so on different terms.[267]

13.4 Knowledge

13.4A Knowledge of the Applicant

The applicant is obliged to disclose only what he knows[268] but that includes what he is deemed to know

For example, in the case of corporate applicants, that includes what is known to the *alter ego*,[269] which in a large company means what is known to the risk manager.

The applicant's knowledge consists not only of what is known or deemed to be known (above) but also of what is known to agents (below 13.4A1), what he learns from experience (13.4A2), or from enquiry (13.4A3).

13.4A1 *Agents*

Applicants are deemed to know what is or should be known to their agents.[270]

For example, what is or should be known to an insurance intermediary acting for the applicant.[271]

13.4A2 *Experience*

Applicants in business are deemed to know everything which "in the ordinary course of business, ought to be known"[272] to them. However, private applicants are deemed to know only what their actual experience should have taught them.[273]

13.4A3 *Enquiry*

Private applicants are expected to have sought medical advice but do not have to tell the insurer about it, unless the advice is serious.[274] In particular, they are not obliged to seek access to their medical records, or to search the internet for information about the risk in question,[275] but, if they do so, they must disclose any material information which they find.[276]

13.4B The Knowledge of the Insurer

Applicants do not have to disclose material information known to the insurer,[277] information actually known, such as the applicant's criminal record (previously disclosed),[278] information known as a matter of business, (below 13.4B1) or information concerning matters of common knowledge (13.4B2).

Moreover, it being unlikely that the person making the decision about the application is known to applicants, so it is enough for applicants to disclose to whoever seems to be appropriate,[279] such as the agent marketing the insurance.[280]

13.4B1 *Business knowledge*

Insurers are deemed to know their trade, and events affecting it.

For example, insurers covering property in Ireland in 1920 were deemed to be aware of problems arising out of local politics,[281] and marine insurers in 1864 were deemed to know about the capture of a notorious ship.[282]

Today, English courts simply ask what can this kind of insurer be reasonably expected to know?[283] Soon, they will be expected to check electronic files for relevant information.[284]

13.4B2 *Common knowledge*

Insurers are presumed to be aware of matters of common knowledge at the time.

For example, in the 1950s insurers were presumed to be aware that small grocers might sell fireworks in October.[285]

13.5 Waiver of Disclosure by Insurers

Waiver may be waiver of the duty (below 13.5A), waiver of further information (15.5B) or waiver of the remedy of rescission (13.5C).

13.5A Waiver of duty

Clear waiver of the duty of disclosure is permitted[286] but failure to ask applicants about the risk is not usually (clear) enough.[287]

However, if policies are marketed on line, that is by inference waiver of the duty altogether, and that is also the case where the insurer knows that the applicant is in no position to know about the risk, such as transit insurance where the applicant does not know about the vehicle.[288]

Moreover, the motor insurer who asks about accidents in the last 5 years implicitly waives information about accidents before that;[289] and, if the applicant tenders documents, it can be inferred that the insurer is aware of the contents of the documents.[290]

13.5B Waiver of further information

This occurs where applicants disclose some information that is incomplete but the insurer makes no further enquiry to get the full picture.[291]

13.6 Breach

13.6A Rescission

At common law breach of the duty of disclosure entitled the insurer to reject a claim and rescind (avoid) the contract.[292] However, rescission was barred where the insurer has unequivocally affirmed the contract,[293] or (unlikely) is unable to make restitution by returning premium.[294]

Moreover, from January 2005 a statutory rule provided that insurers must not "unreasonably reject a claim by a customer".[295]

13.6B Damages

In the event of fraud[296] or negligent misrepresentation[297] by an applicant, insurers are entitled to recover damages.

13.7 Fair presentation

From August 2016 the basic rule was replaced by a duty to make a 'fair presentation of the risk'.[298] Much of what has just been stated still applies. The difference from August 2016 lies mainly in the content and form of the information that must be communicated to the insurer.

14 Illegal Insurance

This chapter seeks to explain the random and often controversial cases in which public policy, which insurers and insured cannot directly influence, might affect the validity or enforceability of their insurance.

14.1 Introduction

Like non-disclosure, the question of the legality of insurance is one raised by insurers to resist a claim. Based, as it is, on public policy, the factors connected with legality change from time to time, so that there are few clear rules.

14.2 Illegality

Insurance may be illegal because of what occurred when it was contracted, or because of the purpose served by the insurance.

14.2A Illegality when contracting

This may be because (a) the applicant lacked insurable interest (above chapters 2 and 3) (b) the applicant was an enemy alien,[299] (c) the insurer was unlicensed,[300] or (d) the insurer was guilty of discrimination, (e) because the insurance was intended to indemnify the beneficiary for the consequences of an unlawful activity, or (f) it supported an illegal purpose.

An example of (d) was to treating women less favourably (charging higher premium) than men.[301]

Examples of (e) were motor insurance claims in respect of injury incurred falling from a van when escaping the scene of a crime[302] and in respect of injury inflicted deliberately;[303] and a liability insurance claim in respect of recklessness.[304]

An example of (f) was the insurance of smuggled goods.[305]

15 Claims

This chapter details the claims procedure to obtain insurance money, the conditions that are the "machinery" that makes the contract work as intended in this important matter. The conditions, discussed in this chapter, are those governing notice, particulars and proof of loss, and arbitration clauses, as well as other modes of claims' settlement. Central to the law here are the rules concerning claims that are fraudulent.

15.1 Introduction

Claims must be submitted in the right way, to the right person or office, containing correct and truthful information.

15.1A Claims Procedure

Most contracts require and regulate the written notice of loss to the insurer to start a claim.[306]

However, claims at Lloyd's, London, are submitted by the relevant Lloyd's broker by means of an electronic claims file (ECF) and through the Claims Loss Advice and Settlement System (CLASS).[307]

15.1A1 *The Claimant*

The claimant must be the insured, or a person acting his behalf, and not a third party.[308]

15.1A2 *Transmission*

The claim must be sent to (and brought to the attention of) the correct person.[309]

For example, it is sufficient to post it to the insurer at a particular place, such as the head office of the insurance company, if that is what is required by the policy.[310] However, it may be sufficient to give it to a local agent for transmission to head office, if given in time for it to reach head office in the normal course of business.[311]

15.1A3 *Time*:

Notice (which initiates claims) must be given within the time required by the policy or, if none, within a reasonable time.[312] Time runs from an event, such as the loss, accident, or occurrence.

For example, where an insurer of cash in transit excluded liability for loss not notified "within 14 days of its occurrence", it was not liable for periodic embezzlement of the money over several months prior to the last 14 days, even though notice was given as soon as the insured discovered the loss.[313]

As regards policy requirements and what is a reasonable time, a policy requirement of "immediate notice" is not read literally bur as "all reasonable speed" in the circumstances.[314]

Thus, even notice of accidental death a year later was sufficient when the claimant was unaware until then of the existence of the policy.[315] But it must also be in time for the insurer to test the genuineness of claims before the evidence is obscured,[316] and to minimise loss (and thus the amount to be paid).[317]

If notice is late, the claim is ineffective even if the insurer is not prejudiced thereby.[318]

15.1B Claims Content

15.1B1 *Initial notice*

This notice is only required to serve the purpose of notifying the insurer of a likely claim in ordinary language.

Thus, a motor insurer could not require a claimant to mention 'theft' because the "ordinary man is not sufficiently versed in the technicalities of the law properly to swear to the nature of the [relevant] offence".[319]

15.1B2 *Particulars of loss*

After the initial notice of a claim, the insurer must indicate, if necessary, what further particulars are required.[320] Commonly insurers respond simply by sending a standard claim form.

15.2 Proof

Sooner or later, the claimant must prove (on the balance of probabilities) the amount or extent of the loss claimed.[321]

A policy requirement of "proof satisfactory to" the insurer, means such proof as the insurer "might reasonably require" in good faith. Thus life insurers may require a post mortem examination of the deceased.[322]

15.3 Faulty Claims

15.3A Breach of Notice Requirements

The legal consequences depend on whether the requirement is (a) a condition precedent to indemnity, which is unlikely unless the words "condition precedent" have been used;[323] (b) a suspensive condition barring payment until notice is given; or (c) a minor duty, breach of which does not prevent recovery.[324]

15.3B Fraudulent Claims

A claim is fraudulent where the insurer proves a substantially false and material statement made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.

15.3B1 *Substantial falsehood*

A claim is substantially false (a question of fact) where, for example it is considerably exaggerated in amount and not just a miscalculation or innocent over-estimate.[325]

15.3B2 *Materiality*

The false statement must be material to the insurer's decision to pay – the amount to be paid, the identity of the payee or whether to pay anyone at all.

Thus, arguably, the claimant who presents false evidence to bolster a true claim, or conceals irrelevant facts, that he finds embarrassing (such as his age), does not make a material misstatement: the insurer would have paid anyway.[326]

15.3B3 *Intention*

The statement must be, not just careless, but intentionally false. A controversial example of fraud is the 'fraudulent device': where "the insured believes that he has suffered the loss claimed, but seeks to improve or embellish the facts surrounding the claim, by some lie" later on.[327]

15.3C The Consequences of Fraud

15.3C1 *Non-Payment*

If the fraud is discovered later, the insurer may recover the money paid; and if the fraud is established before that, the insurer is not obliged to pay.[328]

15.3C2 *Termination of Cover*

Absent a provision to that effect, it has been assumed that the insurer may terminate cover;[329] however this has been confirmed by the Insurance Act 2015.

15.3C2 *The Insurance Act 2015*

From August 2016, where "the insured makes a fraudulent claim…(a) the insurer is not liable to pay the claim, (b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and (c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act".[330]

15.4 Waiver

In general, waiver "applies when a state of affairs comes into existence in which one party becomes entitled to exercise a right, and has to choose whether to exercise that right or not."[331] Thus claims conditions may be waived.

For example, where an insurer must decide whether to terminate the contract, it can choose to do so or not.

15.4A Distinguish estoppel

Estoppel is a promise not to rely upon an available defence to a claim.[332]

For example, where the insurer says that it will not plead a policy exception.

Insurers' silence is without effect, unless it caused prejudice to the claimant or the delay "was so long that the court felt able to say that the delay in itself was of such a length as to be evidence that [the insurer] had in truth decided to accept liability".[333]

15.5 Claims Enforcement

15.5A Courts with jurisdiction

Claims may be enforced by courts with jurisdiction, which is regulated mainly by EU legislation.[334] This regulates all insurance contracts except reinsurance.[335]

A modified version of this determines the jurisdiction of the different parts of the UK.

15.5B Arbitration

A contract term may require disputes to be arbitrated before being litigated.[336] Location and thus and convenience, however, may be a matter of chance.

A famous example is that of three arbitrators, who held the arbitration in London, met in Paris to consider their final award, and signed it at their respective residences: New York, Geneva and Tokyo.

15.5C Alternative Dispute Resolution (ADR)

ADR has been developed in a number of countries for insurance disputes. For disputes in the UK the Financial Ombudsman Service (FOS) was set up staffed by the government.[337]

16 Indemnity

This chapter explains the rules that determine the amount of money which insurers are obliged to pay, and to which policyholders are entitled, under valid insurance policies.

16.1 Introduction

In the case of non-indemnity insurance, such as life insurance, claimants recover the amount stated in the policy. In the case of indemnity insurance, such as property insurance, claimants recover the amount of their actual loss, which has to be assessed (below 16.2).

Claimants may recover less than their actual loss (a) to the extent that they are their own insurer (below, 16.1B), (b) if they are unable to prove their actual loss, (c) when their actual loss is greater than the sum insured (16.1A), or (d) when their actual loss is consequential loss (16.1C) and not covered by the claimant's insurance.

16.1A The Sum Insured

The sum insured according to the policy limits the amount recoverable. However, the insurer is likely to be liable for successive losses, even though the aggregate thus payable exceeds the policy limit.

For example, when a tram overturned in 1890, 40 people were injured. The tramway's liability policy contained a limit of "£250 in respect of any one accident". It was held that the limit applied not to the aggregate of the 40 sums claimed but to the sum claimed by each person.[338]

16.1B Own Insurer

Where a policy contains an excess clause or deductible, whereby the insured bears the first part of any loss, these clauses are enforced in accordance with their terms.[339]

16.1C Consequential Loss

Loss recoverable is limited to immediate loss. The insurer is not liable for consequential loss.

For example, a consequence of fire damage to an inn was loss of business; loss of business is insurable separately, but it is not fire loss and was not recoverable under the fire insurance on the building.[340]

16.2 Loss Assessment

16.2A Loss

Property may be totally lost or partially lost, which means either that a part is missing or that there is damage to part of the property only. In each case, the relevant loss is purely economic without regard to sentimental value.

Thus, where the insured claimed £18,000 for a film, the "child of his artistic creation", which had been stolen and not recovered, the judge awarded a lesser sum: the estimated market value of the film.[341]

16.2B Assessment

To assess market value of the property in question, the court applies one of two measures, capital value or cost of repair.

16.2A1 *Capital value*

The first measure takes the capital value of the property in an undamaged state and compares it with its value in the damaged state.[342]

16.2A2 *Cost of Repair*

The second measure takes the cost of repair. Which of the two measures is appropriate depends on factors, such as the claimant's intentions at the time of loss concerning the use to be made of the property, and the reasonableness of those intentions.[343]

Thus, if he intended to sell it, the basis of assessment is the market value of the property.[344]

But, if he did not intend to sell, but that becomes the intention as a consequence of the loss, perhaps because alternative accommodation is needed quickly, the basis of indemnity is the cost of finding alternative property.[345]

Finally, only if he intended to keep the property, whether to live or to work there, the basis is the cost of repair.[346]

17 Payment And Non- Payment

Payment in conformity with the insurer's obligation is legally simple. Complexity comes in where the payment made is mistaken in some way and the question arises whether the money can be recovered.

17.1 Introduction

In the event of insured loss (above chapter 9), the insurer discharges its main duty by payment or, in the appropriate case, repair (of property insured).[347] This chapter is concerned, first, with the time and legal nature of payment (below 17.2), the mode of payment (17.3), and the identity of the payee (17.4). These matters are determined primarily by the contract of insurance, subject to general rules of law governing payment. This chapter is also concerned with payment by mistake (17.5), settlement of claims (17.6), and, last but not least, the effect of non-payment (17.7).

17.2 The Time of Payment

If no policy term on this, the time for payment is that of the event insured,[348] subject to proof. For example, 30 days after proof of fire loss, or a reasonable time thereafter, depending on factors such as the time needed to assess the claim[349] and whether the claimant responded to reasonable requests for information by the insurer.

Note that, in the case of personal injury where the amount due depends on bodily recovery, payment may be periodic thereafter.[350]

17.3 Mode of Payment

Payment must be in cash,[351] unless, as is common, payment by cheque is implicitly authorised.[352]

17.4 The Payee

Unless the contract provides otherwise, payment must be to the insured, his agent, or another person designated by the insured, such as a loss payee (see below, 17.4A).

In the case of a joint policy, payment may be to any one of the insured.[353]

17.4A Loss Payee

The contract may stipulate that the money shall be paid to a third party, a person other than the original insured, but that stipulation may be enforced by the insured but not by the third party.

That was the common law, which was changed, however, by the Contracts (Rights of Third Parties) Act 1999. Section 1(1), confers a right of enforcement on such a person.

17.5 Payment by Mistake

If the insurer pays X by mistake, the insurer is still obliged to pay Y, the right person.[354]

Thus, if the insurer pays the surrender value of a life policy on presentation of a forged authority, the forgery being void¸ the policy must still be respected.[355]

If insurer A has paid B, the right person, but on the mistaken assumption that the money was due, can A recover the money? The answer depends mainly on (a) whether B induced the mistake and (b) whether the money has passed from B to an innocent third party C: if so, whether or not A's mistake was induced by B, A's chances of recovering the money will be reduced by C's claim to retain it and the court must compare their respective merits.

Assuming that recovery by A does not entail the vitiation of a contract, A recovers the money if its mistake was (i) a sufficient mistake (17.5A); and (ii) an excusable mistake (17.5B).

17.5A Sufficient Mistakes

It is sufficient that 'but for' the mistake the insurer would not have paid.[356]

Thus, cases include payment on a policy that had lapsed,[357] payment in the mistaken belief that the loss was covered,[358] as well as mistakes about the extent of loss.[359]

17.5B Excusable Mistakes

A mistake is excusable, though careless,[360] but not if the insurer 'waives all inquiry' into the matter, in which case the insurer deliberately assumes the risk of mistake (below 17.5B1).

17.5B1 Risk Assumption

In general contract law, if one party to a contract has taken the risk that an assumption is mistaken, the contract stands, if the assumption proves false. So, if, to avoid uncomfortable litigation, the insurer does not dispute a claim, it cannot recover the money paid, in the absence of fraud.[361]

Moreover, if the insurer, after discovery of the mistake, "by neglect or unnecessary delay" allows the payee, who is "not responsible for the mistake to alter his position for the worse", the insurer will not be allowed to recover the money.[362]

For example, where an employer overpaid an employee, he could not recover the overpayment because the employee, believing that he had received the correct wage, had spent it.[363] The same is true of the overpayment of insurance money.

17.5C Unfairness

A similar but legally distinct bar to recovery by the insurer is reliance: that, on receipt of the money, the payee has altered his position, in the belief that the money is theirs, to such a degree as to make recovery by the insurer inequitable.[364]

17.6 Settlement of Claims

17.6A Introduction

An insurer that declines to meet a claim in full may agree a settlement of the claim[365] and pay (less) on that basis. If it does this on the basis of a mistake, the rules of recovery may be stricter than those mentioned (above 17.5), because there may be a contract to be set aside: a concluded agreement over the disputed claim. The effect depends on inference in the light of current commercial practice.

For example, where the claimant put in a "hopeful" motor claim of £600, and the insurer simply responded with an "offer" of £385 – which the claimant accepted, this was held to be a contract.[366]

But, the claimant that cashes a cheque from the insurer marked "in full settlement of all claims", does not accept an offer to settle the claim for (no more than) the amount of the cheque.[367]

If the settlement if agreed in writing, signed by both, the general rule applies that signatories are bound, unless consent is induced by bad faith – misrepresentation or non disclosure of material information (below, 17.6A1), or undue influence (17.6A2). Further, the contract may be void on the ground of mistake (17.6B).

17.6A1 *Bad Faith*

A settlement will not be binding, if the claim was fraudulent. The insurer, on the other hand, must explain the terms of any settlement proposed by the insurer.[368]

17.6A2 *Undue Influence*

When a party is induced to make a contract (of insurance or settlement) under (economic) duress[369] or undue influence (UI),[370] consent to the agreement may have been vitiated because they did not exercise a free and independent will.

For example, this may be the case where A, representing the insurer, is one in whom B, the claimant, has come to repose confidence, exercises UI on B to settle.

An extreme case would be where A threatened to pass information of B's misdeeds to the police unless the claimant accepted a small amount in settlement;[371] or, where knowing that B had urgent need of the insurance money, threatened to drag out the claims process, unless B accepted a small amount in settlement.

17.6A2 (a) *Exceptions*

The contract (of settlement) will be enforced where A proves that, in spite of the UI, B *did* exercise a free and independent judgement;[372] or where A establishes that the terms of the agreement (settlement) are not manifestly unfair to B.[373]

17.6B Settlement by Mistake

Relief depends mainly on the allocation of risk of the possibility of mistake.

For example, if a claimant agrees to settle a claim as regards "all unknown and unanticipated injuries and damages", the usual inference is that the claimant assumes the risk of mistake and is bound by the agreement.[374]

17.7 Non-payment

In the case of non-payment of non-indemnity insurance (notably life insurance), a claim is one for a debt; and if the insurer does not pay on time, a claim may be made for interest on the sum due (below, 17.7A) and for special damages for any special loss (17.7B).

In the case of non-payment of indemnity insurance,[375] in most common law countries late payment of a valid claim gives rise to damages subject to general contract law. Arguably this is now also true in England: below 17.7B.

17.7A Interest

Simple interest may be awarded on all or part of any unpaid debt or damages.[376] In the past, courts have awarded the base rate plus one per cent.

17.7B Special Damages

Common law courts award damages for loss was within the contemplation of the parties.

Thus, if the defendant were a motor insurer or a fire insurer, which delayed payment of money due, and the claimant insured, urgently needed the money to buy another van to replace the one stolen or to repair the factory essential to its business, the money should be recoverable as damages,[377] as it is in Australia, Canada, California and New Zealand.

17.7C Distress

Generally, damages for distress and disappointment are not recoverable for breach of contract.[378]

Exceptions are contracts in which at least part of the object is to secure peace of mind, the clear object of many insurance contracts.

Thus, where the insurer persistently refused to pay benefits under a disability policy, causing distress and humiliation to the insured, the court awarded "aggravated" damages for the distress. However, this decision was in Canada,[379] and no such decision has yet been given in the UK.

17.7D Limitation

If an action is brought for money due, it is based on breach of contract, and the limitation period is six years from the date on which the cause of action accrued,[380] which is when payment became due and it became clear that payment would not be made.[381]

Endnotes

1. Readers new to the insurance contract law of England will find that most of the law is found in the past decisions of the courts, past called 'precedent'. Some courts are more important than others and the important courts take precedence.
   The most important court today is the Supreme Court (SC) but until recently this court was called the House of Lords (HL). Below the Supreme Court is the Court of Appeal (CA); below that are other courts, in particular, the Commercial Court, where most (but not all) cases on insurance contract law start.
   For example *Feasey v Sun Life Assurance Co of Canada* [2003] EWCA Civ 885, [2003] Lloyd's Rep IR 637, [71]. The reference is to a case between Feasey and the Sun Life Company which reached the Court of Appeal for England and Wales ([EWCA]).
2. *Medical Defence Union Ltd v Dept of Trade* [1980] Ch 82, 97.
3. S. 22 (of the General Provisions) of the California Insurance Code.
4. *Group Life & Health Ins Co v Royal Drug Co*, 440 US 205, 214 (1979).
5. *Department of Trade & Industry* v *St Christopher Motorists' Assn* [1974] 1 Lloyd's Rep 17, 19.
6. So "self-insurance" by A is not insurance. Nor is agreement by B to arrange insurance for A or to manage (mutual) insurance for other people including A.
7. *Medical Defence Union* (above) p. 93. However, the decision was that it was *not* insurance because otherwise many professional and other bodies which give their members the right to advice and assistance might have to be treated as insurers and this would be inappropriate and burdensome.
8. *Department of Trade & Industry* (above) p. 21.
9. See further below chapter 9.
10. *Swain v The Law Society* [1983] AC 598, 611. See further chapter 7 below.
11. *WASA v Lexington* [2009] UKHL 40, at [33].
12. *Meritz Fire & Marine Co v Jan de Nul* [2011] EWCA Civ 827.
13. *Harvey v Dunbar* [2013] EWCA Civ 952.
14. See *Fuji Finance Inc v Aetna Life Ins Co Ltd* [1996] 4 All ER 608 (CA).
15. *Teal Assurance v W.R. Berkley* [2013] UKSC 57 at [30] (emphasis added).
16. *Feasey* v *Sun Life Assurance Co of Canada* [2003] EWCA Civ 885, [97].
17. A difficult issue of public policy and interpretation has arisen about the Life Assurance Act 1774. Today the 1774 Act is mostly ignored.
18. A "man does not gamble on his own life to gain a [notional] victory by his own death": *Griffiths v Fleming* [1909] 1 KB 805, 821 (CA).
19. *Simcock v Scottish Imperial Ins Co* (1902) 10 SLT 286, 287; but it must be something real and more than "a mere chance or expectation": G*riffiths v Fleming* (above) p. 820.
20. *Barnes v London, Edinburgh & Glasgow Life Assurance Co* [1891] 1 QB 864, 866 (CA).
21. Traditionally, some employees being more valuable than others, this interest was limited to senior executives, or key technicians; see *Simcock v Scottish Imperial Ins Co* (1902) 10 SLT 286 (Ct Sess).
22. Except in the case of spouses where it is whatever (unlimited) amount the policy states.
23. *Griffiths v Fleming* (above).

24. *Feasey* v *Sun Life Assurance Co of Canada* [2003] EWCA Civ 885, [2003] Lloyd's Rep IR 637 at [97].
25. *Feasey* (above) at [81].
26. *Feasey* (above) at [85].
27. *Lloyd* v *Fleming* (1872) LR 7 QB 299, 302.
28. See *Mark Rowlands Ltd* v *Berni Inns Ltd* 1985] 2 Lloyd's Rep 437, 442 (CA).
29. In marine practice, cover is offered in PPI (Policy Proof of Interest) policies, although in reality the policy proves nothing, and the courts consider each case on its merits.
30. *Eyre* v *Glover* (1812) 16 East 218, 220. Generally see *Chaplin* v *Hicks* [1911] 2 KB 786 (CA).
31. *Inglis* v *Stock* (1885) 10 App Cas 263, 274.
32. Section 1(3).
33. Section 1(5).
34. Section 1(1)(b). The intention is that the rights enforceable by the third party are not limited to terms conferring a positive benefit, such as insurance money but also (section 1(6)) a term of the contract which "excludes or limits liability" i.e. a defence.
35. Section 2(1).
36. Usually the policy is a life policy; however, a policy may be within the scope of section 11, even though it covers events other than death such as accidental injury, and even though it excludes death by certain causes.
37. Section 10.
38. The Acts only help spouses and children, not "partners" or cohabitants.
39. *Eastern Ins Co Ltd* v *Siu* [1994] 1 Lloyd's Rep 616 (PC). See also chapter 5 (below).
40. *Tomlinson (Hauliers) Ltd* v *Hepburn* c. [1966] AC 451.
41. See *Re E Dibbens & Sons* [1990] BCLC 577, 582–3.
42. Section 1.
43. *Post Office* v *Norwich Union Fire Ins Sy Ltd* [1967] 2 QB 363, 376 (CA).
44. *Post Office* v *Norwich Union* (above). Moreover, the third party's rights against the insurer are subject to any defences available to the insurer against the insured, such as the avoidance of cover for non-disclosure.
45. Section 2.
46. *Re OT Computers* [2004] EWCA Civ 653, [2004] Ch 317, at [33].
47. It includes Company Voluntary Arrangements (CVAs) or Individual Voluntary Arrangements (IVAs), as the case may be: sections 4 to 6.
48. Section 12.
49. Or abroad: Section 143(1).
50. European Communities (Rights Against Insurers) Regulations 2002 (SI 2002 No 3061), (reg 3(2)) implementing the Fourth European Directive 2000/26, OJ L181/65.
51. See s 145(3)(a).
52. *Harrington v Pinkey* [1989] 2 Lloyd's Rep 310 (CA).
53. Section 148. The insurer must pay, even though the insurer is entitled to "avoid or cancel" the policy, notably on grounds of misrepresentation or non-disclosure, unless in such cases the insurer obtains a court declaration that it is entitled to avoid the policy: section 151.

54. S. 151; unless in the latter case the third party was "allowing himself to be carried in or upon the vehicle" and knew or had reason to believe when the journey commenced that the vehicle was stolen: *McMinn* v *McMinn* [2006] EWHC 827 (QB), [2006] Lloyd's Rep IR 802 at [17].
55. Persons who have obtained an unsatisfied judgment.
56. Where third party A was "voluntarily allowing himself to be carried in the vehicle and, either before the commencement of his journey in the vehicle or after such commencement if he could reasonably be expected to have alighted from it": *Pickett* v *Roberts* [2004] EWCA Civ 6, [20]. This has been called the "petrol station" defence, presumably, because if A does not jump out there, while the vehicle is not in motion, it will be inferred that A's continued presence in the vehicle is voluntary.
57. See *Phillips* v *Rafiq* [2007] EWCA 7.
58. *Re Great Western* [1999] Lloyd's Rep IR 377 at 386.
59. The FCA is the sole regulator of "insurance intermediaries": firms, other than insurers, carrying on "insurance mediation activities".
60. For investment insurance (mainly life insurance): general rules in the *Conduct of Business Sourcebook* (COBS) apply and, to general insurance, except large risks and reinsurance, rules in the *Insurance Conduct of Business Sourcebook* (ICOBS) apply.
61. Financial Services Act 1986.
62. See *Stockton* v *Mason* [1978] 2 Lloyd's Rep 430, 432 (CA).
63. *Bancroft* v *Heath* (1901) 6 Com Cas 137 (CA).
64. *Stockton* v *Mason* (above).
65. A group of individual members of Lloyd's.

66. *Hambro* v *Burnand* [1904] 2 KB 10 (CA).
67. In the case of "lineslips", which are facilities arranged by a Lloyd's broker, and "consortia", the leading underwriter has authority to contract for all the participating syndicates in respect of specified kinds of business.
68. *Armagas Ltd* v *Mundogas SA* [1986] AC 717, 778.
69. However, refusal to ratify is final and irrevocable: *McEvoy* v *Belfast Banking Co Ltd* [1935] AC 24.
70. See ICOBS 6.1 ff., in particular, 6.1.7G.
71. *Dunbar* v *A & B Painters Ltd* [1986] 2 Lloyd's Rep 38 (CA).
72. See *Orakpo* v *Barclays Insurance Services* [1995] LRLR 443 (CA).
73. See *Customs and Excise Commissioners* v *Barclays Bank plc*. [2006] UKHL 28, [2007] 1 AC 181.
74. *Cherry* v *Allied Insurance Brokers* [1978] 1 Lloyd's Rep 274.
75. *Caparo Industries plc* v *Dickman* [1990] 2 AC 605, 638; *JEB Fasteners Ltd* v *Marks Bloom & Co* [1983] 1 All ER 583 (CA).
76. i.e. where there is a relationship of trust and confidence.
77. The landmark case is *Cook* v *Deeks* [1916] 1 AC 554 (PC).
78. See *Phipps* v *Boardman* [1967] 2 AC 46.
79. See *Aneco Reinsurance Underwriting* v *Johnson & Higgins* [2001] UKHL 51.
80. *Islander Trucking Ltd* v *Hogg, Robinson & Gardner Mountain (Marine) Ltd*. [1980] 1 All ER 826; the claimants suffered financial loss then because the insurance was less valuable than that which the brokers were required to procure, even though the extent of the loss would not become apparent until later, if and when the insurers avoided the contract.
81. Limitation Act 1980, section 5.
82. Limitation Act 1980, section 14A.
83. Section 14A(5). Rules for imputed knowledge are found in section 14A(10).
84. Section 14A(7).
85. Section 14A(8).
86. *Glaister* v *Greenwood* 2001] Lloyd's Rep PN 412.
87. http://fshandbook.info/FS/html/FCA/ICOBS,
88. Principles for Businesses: http://fshandbook.info/FS/html/FCA/PRIN.
89. Consumers are natural persons acting for purposes outside their trade, business or profession, whereas commercial customers are other buyers of insurance.
90. The role of the person who might have assisted the applicant ('transferred agency'): *Newsholme Bros* v *Road Transport & General Ins Co Ltd* [1929] 2 KB 356 (CA).
91. *Bawden* v *London, Edinburgh & Glasgow Assurance Co* [1892] 2 QB 534 (CA).
92. *Joel* v *Law Union & Crown Ins Co* [1908] 2 KB 863 (CA).
93. *Stone* v *Reliance Mutual Ins Sy Ltd* [1972] 1 Lloyd's Rep 469 (CA).
94. The signatory is bound by the answers he makes in the form, but only in the sense in which the questions were explained by the doctor acting for the insurer.
95. *Kaufman* v *British Surety Ins Co Ltd* (1929) 33 Ll L Rep 315, 319.
96. *Walford* v *Miles* [1992] 2 AC 128 (HL).
97. *Allis-Chalmers Co* v *Maryland Fidelity & Deposit Co* (1916) 114 LT 433 (HL). Allied is a presumption is that an application is on the basis of the insurer's standard terms

98. *Ramsgate Victoria Hotel Co Ltd* v *Montefiore* (1866) LR 1 Ex 109.
99. *Financings Ltd* v *Stimson* [1962] 1 WLR 1184 (CA).
100. *Allis-Chalmers Co* v *Fidelity & Deposit Co* (1916) 114 LT 433 (HL).
101. Except in marine insurance: MIA 1906 s.22.
102. Silence is not sufficient except where insurers respond to an application by sending a policy for approval. If the applicant retains it without demur; and the period of retention is long, the court may infer assent (and acceptance); see *Rust* v *Abbey Life Assurance Co Ltd* [1979] 2 Lloyd's Rep 334, 340 (CA).
103. Insurers are not obliged to respond to applications.
104. *Brinkibon Ltd* v *Stahag Stahl* [1982] 1 Lloyd's Rep 217 (HL).
105. *Carlill* v *Carbolic Smoke Ball Co* [1893] 1 QB 256 (CA).
106. *Roberts* v *Plaisted* [1989] 2 Lloyd's Rep 341 (CA).
107. Each underwriter is an employee of an underwriting agent, acting on behalf of a syndicate of individual underwriting members of Lloyd's.
108. It evidences a series of separate contracts between the applicant and each member of each syndicate whose underwriter has subscribed (by initialling the slip): *General Reinsurance Corp* v *Forsak Fennia Patria* [1983] QB 856 (CA). Since 1992 it has been possible to conclude contracts electronically by placing risks in the market by data interchange.
109. *Mackie* v *The European Assurance Sy* (1869) 21 LT 102.
110. As to premium, if necessary the figure will be implied from the market.
111. *Swain* v *The Law Society* [1983] AC 598, 611 (HL).
112. An exception is mutual insurance, for which members pay 'calls': sums called for later by the mutual insurance society; calls are paid with regard to the collective liability of the society in the period just past.
113. *Bremer v Drewry* [1933] 1 KB 753, 766 (CA).
114. See *Re Charge Card Services Ltd* [1989] Ch 497 (CA).
115. If time is "of the essence" of the contract: *Utd Scientific Holdings* v *Burnley* [1978] AC 904, 924 ff,
116. *Salvin* v *James* (1805) 6 East 571.
117. *Klein* v *New York Life Ins Co*, 104 US 88 (1881).
118. *Tyrie* v *Fletcher* (1777) 2 Cowp 666.
119. MIA s 84(2). The more so if insurance does not attach at all: no risk no premium.
120. Including riders or endorsements, attached to the policy.
121. *Mercantile Bank of Sydney* v *Taylor* [1893] AC 317.
122. *Morris* v *Baron & Co* [1918] AC 1.
123. *Bank of Australia* v *Palmer* [1897] AC 540.
124. *Hart* v *Standard Marine Ins Co* (1889) 22 QBD 499 (CA).
125. See *Bates (Thomas) & Son Ltd* v *Wyndham's (Lingerie) Ltd* [1981] 1 All ER 1077, 1086 and 1090 (CA).
126. *Hayward* v *Norwich Union* [2001] Lloyd's Rep IR 410 [16] (CA); *Charter Reinsurance Co Ltd* v *Fagan* [1977] AC 313, 384.
127. *Higgins* v *Dawson* [1902] AC 1.
128. 93/13/EEC of 5 April 1993.
129. *Toomey* v *Eagle Star* [1994] 1 Lloyd's Rep 516, 520 (CA).
130. Cf *Singh* v *Rathour* [1988] 2 All ER 16, 20 (CA).

131. *Phillips & Stratton* v *Dorintal Ins Ltd* [1987] 1 Lloyd's Rep 482, 487.
132. *De Maurier (Jewels) Ltd* v *Bastion Ins Co Ltd* [1967] 2 Lloyd's Rep 550, 560.
133. *Young v Sun Alliance* [1976] 2 Lloyd's Rep 189 (CA).
134. Thus, if one term is stated to be a 'condition precedent' of cover and another is not, the first is construed as condition precedent of cover but the second is not.
135. *Investors Compensation Scheme Ltd* v *West Bromwich BS* [1998] 1 WLR 896 (HL).
136. *BCCI* v *Ali* [2001] UKHL 8.
137. *HIH Casualty & General* v *New Hampshire* [2001] EWCA Civ 735.
138. *Youell* v *Bland Welch & Co Ltd* [1990] 2 Lloyd's Rep 423, 428; but permitted exceptionally: *Chartbrook* v *Persimmon Homes* [2009] UKHL 38.
139. E.g. *Deutsche Genossenschaftsbank* v *Burnhope* [1995] 4 All ER 717 (HL).
140. *Cornish* v *Accident Ins Co* (1889) 23 QBD 452, 456 (CA).
141. See *First Energy (UK) Ltd* v *Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194, 196 (CA); and Clarke 15-5B2
142. *Youell* v *Bland Welch & Co Ltd* [1992] 2 Lloyd's Rep 127, 134 (CA).
143. See *Charter Re Co Ltd* v *Fagan* [1996] 1 Lloyd's Rep 261, 268 (CA).
144. Excluded from recoverable loss are injury to the feelings of the insured and depreciation in the artistic value of property.
145. *Moore v Evans* 1918] AC 185, 193 ff.
146. *Theobald* v *Railway Passengers' Assurance Co* (1854) 10 Exch 45.
147. See *Masefield* v *Amlin* [2011] EWCA Civ 24.

148. *Promet Engineering Ltd* v *Sturge* [1997] CLC 966, 971 (CA).
149. *Ranicar* v *Frigmobile Pty Ltd* [1983] Tas R 113, 116.
150. *Pilkington* v *CGU* [2004] EWCA Civ 23.
151. The scope of the exception (fire damage caused by riot) is narrower than the scope of the cover (fire from whatever cause): *Monro Brice v War Risks* [1920] 3 KB 94 (CA).
152. Uncertainty arises in the case of persons with substantial brain damage in a vegetative state with brain stem function but without heart function.
153. See *Braganza v BP Shipping Ltd (The British Unity)* [2015] UKSC 17, [17] ff.
154. *Boyd v Refuge Assurance Co Ltd*, 1890 17 R 955
155. *Everett v London Assurance* (1865) 19 CB (NS) 126, 133.
156. *The Knight of St Michael* [1898] P 30, 34
157. *Symington v Union Ins Sy of Canton* (1928) 34 Com Cas 23 (CA).
158. *The Diamond* [1906] p. 282.
159. *Re Hooley Hill Rubber & Chemical Co Ltd* [1920] 1 KB 257, 271–272 (CA).
160. *Canada Rice Mills Ltd v Union Marine & General Ins Co* [1940] AC 55, 71 (PC).
161. E.g. lightning: *Gordon v Rimmington* (1807) 1 Camp 123.
162. *Harris v Poland* [1941] 1 KB 462.
163. *The Alexion Hope* [1988] 1 Lloyd's Rep 311 (CA). An insured corporation can commit arson through the act of senior management (the *alter ego*)
164. *Upjohn v Hitchens* [1918] 2 KB 48 (CA); even arson by the wife of the insured is covered: *Midland Ins Co v Smith* (1881) 6 QBD 561.
165. *Harris v Poland* [1941] 1 KB 462.
166. *Stanley v Western Ins Co* (1868) 37 LJ Ex 73, 75.
167. *Boiler Inspection & Ins Co of Canada v Sherman-Williams Co Ltd* [1951] AC 319 (PC). The meaning of explosion, however, is unclear and for some judges a matter of impression: e.g. *Commonwealth Smelting Ltd v Guardian Royal Exchange Assurance Ltd* [1986] 1 Lloyd's Rep 121, 126 (CA).
168. *British & Foreign Marine Ins Co Ltd v Gaunt* [1921] 2 AC 41, 57; not literally cover against all risks.
169. All risks insurance "covers a risk not a certainty": *Gaunt* (above) p. 57.
170. *Gaunt* (above) p. 46. Ordinary wear and tear must be distinguished from damage resulting from abuse by third parties which is covered.
171. *Blower* v *GW Ry* (1872) LR 7 CP 655, 662.
172. Wilful misconduct is where conduct increases the risk of loss or damage and the insured is aware of this.
173. *Ronson v Patrick* [2006] EWCA Civ 421.
174. *Gaunt* (above) p. 52, and p. 57. Loss or damage caused by the (mis)conduct of others, is usually covered: *London & Provincial Leather Processes* Ltd v *Hudson* [1939] 2 KB 724.
175. See *James Longley v Forest Giles* [2001] EWCA Civ 1242, at [17].
176. *Post Office v Norwich Union Fire Ins Sy* Ltd [1967] 2 QB 363, 373 (CA); see also *West Wake Price & Co v Ching* [1957] 1 WLR 45, 49 and *Teal Assurance v WR Berkley* [2013] UKSC 57 at [15].
177. To deal with conflicts of interest, the insurer will pay "any such claim or claims which may arise without requiring the insured to dispute any claim, unless a Queen's Counsel (to be mutually agreed upon by the underwriters and insured) advise that the same could be successfully contested by the insured and the insured consents to such a claim being contested, but such consent not to be unreasonably withheld".

178. See *Brice v Wackerbarth (Australasia) Pty Ltd* [1974] 2 Lloyd's Rep 274, 276–277 (CA).
179. See e.g.*John Wyeth v Cigna* [2001] EWCA Civ 175, at [32] ff.
180. See *Gan v Tai Ping (Nos 2 & 3)* [2001] EWCA Civ 1047, (CA), at [55 ff].
181. See *Robert Irving & Burns v Stone* [1998] Lloyd's Rep IR 258, 260 (CA).
182. *Kuwait Airways Corp* v *Kuwait Ins Co* .[1996] 1 Lloyd's Rep 664, 686.
183. *Dow Chemical* Co v *Associated Indemnity Corp*, 724 F Supp 474 (ED Mich, 1989).
184. *Eagle-Picher Industries Inc v Liberty Mutual Ins Co*, 682 F 2d 12 (1 Cir, 1982).
185. *Durham v BAI* (above) at [25].
186. *Keene Corp v INA*, 667 F 2d 1034 (Col, 1981).
187. *Bolton MBC v Municipal Mutual Ins Ltd* [2006] EWCA Civ 50, at [24].
188. *Fairchild v Glenhaven Funeral Services* [2002] UKHL 22, at [33]; confirmed in *Durham v BAI* (above). See also the Compensation Act 2006 s 3.
189. *HLB Kidsons v Lloyd's Underwriters* [2007] EWHC 1951 (Comm), at [17] ff.
190. Prima facie: *West Wake Price & Co v Ching* [1957] 1 WLR 45, 57.
191. *Robert Irving & Burns v Stone* [1998] Lloyd's Rep IR 258, 261 (CA).
192. See *Laker Vent v Templeton* [2009] EWCA Civ 62. Commonly it specifies notification of circumstances *likely* to give rise to a claim: if there was at least a 50 per cent chance of a claim: *Layher v Lowe* [2000] Lloyd's Rep IR 510 (CA).
193. *Cornish v Accident Ins Co* (1889) 23 QBD 453, 457 (CA).
194. *Fraser v Furman (Productions) Ltd* [1967] 1 WLR 898, 905–906 (CA) *Sofi v Prudential Assurance Co Ltd* [1993] 2 Lloyd's Rep 559 (CA).
195. *Hardy v MIB* [1971] 2 QB 554 (CA).
196. *Burrow v Rhodes* [1899] 1 QB 816, 828 ff.
197. *Kawasaki Kisen Kabushiki Kaisha of Kobe v Bantham SS Co Ltd* [1939] 2 KB 544, 558 (CA).
198. E.g. *American Airlines Inc v Hope* [1974] 2 Lloyd's Rep 301 (HL).
199. *Spinney's (1948) v Royal Ins Co* [1980] 1 Lloyd's Rep 406, 430.
200. *Spinney's (above)* p 437.
201. Public Order Act 1986 s. 1.
202. European Union Council Framework Decision 2002/475; see the UK Terrorism Act 2000, s 1.
203. Council Directive 93/13/EEC of 5 April 1993, implemented in the UK by SI 1994 No 3159 and SI 1999 No 2083.
204. Art. 2(b). The Directive does not apply to contracts with non-consumers or to contracts individually negotiated.
205. In Schedule 3 to the Directive.
206. The "requirement of good faith …is one of fair and open dealing.… It looks to good standards of commercial morality and practice": *Director General of Fair Trading v First National Bank* [2001] UKHL 52 at [17] See also the Insurance Act 2015 section 14.
207. *The Good Luck* [1992] 1 AC 233, 263. Also described as "a condition on which the contract is founded": *Bean v Stupart* (1778) 1 Doug 11, 14.
208. Distinguish insurance warranties from insurance exceptions: above chapter 10.
209. *Joel v Law Union* [1908] 2 KB 863, 886 (CA).
210. *Conn v Westminster Motor Ins Assn Ltd* [1966] 1 Lloyd's Rep 407 (CA).

211. The insurer's perception of the risk (in particular of the owner) had changed and (in the warranty) the insurer had contracted for the right to reconsider the cover.

212. For example, where a lorry was insured against fire and the proposal (stated to be the basis of the contract) contained an innocent misstatement about where it was garaged, although it was probably no more at risk where it was than where stated in the proposal, the House of Lords held that the misstatement was a defence to a claim (and that the policy was ineffective).

213. *Yorke v Yorkshire Ins Co Ltd* [1918] 1 KB 662, 666.

214. *Woolfall & Rimmer Ltd v Moyle* [1942] 1 KB 66 (CA).

215. *Economides v Commercial Union Assurance Co* [1998] QB 587 (CA).

216. *Kirkbride v Donner* [1974] 1 Lloyd's Rep 549.

217. *Simmonds v Cockell* [1920] 1 KB 843.

218. *Fraser* v *Furman (Productions) Ltd* [1967] 1 WLR 898, 905 (CA).

219. In this respect insurance law is governed by the general law of contract: *Pan Atlantic Ins Co Ltd v Pine Top Ins Co* [*1995*] *1 AC 501.*

220. See chapter 13; also the special cases discussed in *Hamilton v Allied Domecq* [2007] UKHL 33.

221. Consumer Insurance (Disclosure and Representation) Act 2012 section 2(2).

222. *Marcovitch v Liverpool Victoria Friendly Sy* (1912) 28 TLR 188, 189, (CA).

223. However, note that a statement of present fact may be given primarily for its implications about the future. For example, a statement that the house to be insured is in good repair implies that the house will withstand (normal) weather conditions in the future.

224. *Edgington v Fitzmaurice* (1885) 29 Ch D 459, 482 (CA): "the state of a man's mind is as much a fact as the state of his digestion".
225. *Bisset* v *Wilkinson* [1927] AC 177 (PC).
226. *Ionides* v *Pacific Fire & Marine Ins Co* (1871) LR 6 QB 614, 683–684.
227. *Economides* (above).
228. *Joel v Law Union & Crown Ins Co [1908] 2 KB 863 (CA).*
229. *McInerny v Lloyds Bank Ltd* [1974] 1 Lloyd's Rep 246, 254 (CA).
230. *Anderson* v *Pacific Fire & Marine Ins Co* (1869) 21 LT 408, 410.
231. *Golding* v *Royal London Auxiliary Ins Co Ltd* (1914) 30 TLR 350.
232. *With* v *O'Flanagan* [1936] Ch 575 (CA) confirmed in *Cramaso LLP v Ogilvie-Grant* [2014] UKSC 9.
233. Marine Insurance Act 1906 s. 20(4). Most believe that this rule applies to non-marine insurance.
234. *Smith* v *Kay* (1859) 7 HLC 750.
235. *Smith* v *Chadwick* (1882) 20 Ch D 27, 44–45 (CA); just "actively present" to the mind of the recipient, not decisive: v *Fitzmaurice* (1885) 29 Ch D 459, 483 (CA).
236. *Ionides* v *Pender* (1874) LR 9 QB 531, 538–539.
237. See also above 11.2.
238. *Redgrave* v *Hurd* (1881) 20 Ch D 1, 21 (CA) approved in *Pan Atlantic* (above) p. 549 as a "presumption of inducement".
239. *Renault UK Ltd* v *Fleetpro Technical Services* [2007] EWHC 2541 (QB).
240. *Industrial Properties (Barton Hill) Ltd v AEI Ltd* [1977] QB 580, 597 (CA) supports this but there has been much more support for such a position in the USA.
241. Against Type C is an argument by analogy: in actions for damages for negligent misstatement, the law requires that loss should have been *caused* by the misstatement: *JEB Fasteners Ltd* v *Marks Bloom & Co* [1981] 3 All ER 289 (CA).It would be bizarre if the same were not true when the remedy sought was the more radical remedy of rescission, so, the effect of the misrepresentation (the inducement) should also be causal in the sense of decisive.
242. *Central Rly Co of Venezuela* v *Kisch* (1867) LR 2 HL 99, 120.
243. *Peekay* v *ANZ* [2006] EWCA Civ 386, [2006] 2 Lloyd's Rep 511.
244. *Kyle Bay Ltd* v *Underwriters* [2007] EWCA Civ 57 at [35].
245. *International Management Group* v *Simmonds* [2003] EWHC 177 (Comm), [2004] Lloyd's Rep IR 247 at [150].
246. *HIH Casualty & General* v *Chase Manhattan Bk* [2003] UKHL 6 [5] and [42],
247. *Greenhill* v *Federal Ins* [1927] 1 KB 65, 76 (CA).
248. *Carter* v *Boehm* (1766) 3 Burr 1905, 1909.
249. Insurance Act 2015 s. 3(1).
250. See *Assicurazioni Generali* v *ARIG* [2002] EWCA Civ 1642.
251. *Ionides* v *Pender* (1874) LR 9 QB 531, 537.
252. *Ayrey* v *British Legal* [1918] 1 KB 137, 140.
253. *The Brimnes* [1975] QB 929, 945 (CA).
254. *Hadenfayre v British National* [1984] 2 Lloyd's Rep 393.
255. See *CTI* v *Oceanus* [1984] 1 Lloyd's Rep 476, 486 (CA).

256. *Canning v Farquhar* (1886) 16 QBD 727 (CA).
257. *Lishmann v Northern* (1875) LR 10 CP 179, 181.
258. Ibid p. 182.
259. *Royal Exchange v Hope* [1928] 1 Ch 179, 195 (CA).
260. MIA s. 18(2) which also applies to non-marine insurance.
261. *Zurich v Morrison* [1942] 2 KB 53, 58 (CA). But in Scotland the test is the view point of the reasonable applicant.
262. *Roselodge v Castle* [1966] 2 Lloyd's Rep 111.
263. *Bisset v Wilkinson* [1927] AC 177 (PC).
264. *British Equitable v GWR* (1869) 20 LT 422.
265. *March Cabaret v London Assurance* [1975] 1 Lloyd's Rep 169.
266. Consumer Insurance (Disclosure and Representation) Act 2012 section 2(2).
267. See *Pan Atlantic v Pine Top* [1995] AC 501. Moreover, this case held that the actual insurer must have been influenced.
268. *Economides v CU* [1998] QB 587, 601 (CA).
269. *Blackburn v Vigors* (1887) 12 App Cas 531, 540. This refers to senior management.
270. *Blackburn v Vigors* p. 537.
271. *Australia & N Zealand Bk Colonial Wharves* [1960] 2 Lloyd's Rep 241, 254.
272. MIA s. 18(1) applicable to non-marine insurance.
273. *Economides* (above) p. 601.
274. *Godfrey v Britannic* [1963] 2 Lloyd's Rep 515, 532.
275. See *London General v General Marine* [1921] 1 KB 104, 112 (CA): no duty to search filing systems.
276. By analogy with *The Hoyanger* [1979] 2 Lloyd's Rep 79, 89.
277. *Carter v Boehm* (1766) 3 Burr 1905, 1911.
278. *Woolcott v Excess* [1979] 1 Lloyd's Rep 231, 241 (CA).
279. *Bancroft v Heath* (1901) 6 Com Cas 137 (CA).
280. *Stockton v Mason* [1978] 2 Lloyd's Rep 430 (CA).
281. *Lean v Hall* (1923) 16 Ll.L.Rep 100.
282. *Bates v Hewitt* (1867) LR 2 QB 595.
283. E.g. *Glencore v Alpina* [2003] EWHC 2792 [41] (Comm).
284. Cf *Malhi v Abbey Life* [1996] LRLR 237 (CA, 1994) as regards paper files.
285. *Hales v Reliance Fire Co* [1960] 2 Lloyd's Rep 391.
286. *HIH v Chase Manhatton* [2003] UKHL 6, [11].
287. *Roselodge v Castle* [1966] 2 Lloyd's Rep 113, 133.
288. Cantiere (above).
289. See *Hair v Prudential* [1983] 2 Lloyd's Rep 667, 673.
290. *Pan Atlantic v Pine Top* [1993] 1 Lloyd's Rep 496 (CA).
291. *Asfar v Blundell* [1896] 1 QB 123 (CA).
292. *Redgrave v Hurd* (1881) 20 Ch D 1 (CA).
293. *West v National Motor* [1955] 1 Lloyd's Rep 207 (CA).
294. MIA s.84(3((a).
295. Unless fraudulent: ICOBS Rule 7.3.6.8.1 IR.

296. On the basis of the tort (delict) of deceit: as in *Derry v Peek* (1889) 14 App Cas 337.
297. On the basis of the Misrepresentation Act 1967 s.2(1) as interpreted in Royscott (above).
298. Insurance Act 2015 s. 3(1).
299. *Janson v Driefontein* [1902] 2 AC 484, 499.
300. Financial Services and Markets Act 2000 s.19.
301. *Test-Achats* [2011] Lloyd's Rep IR 296.
302. *Joyce v O'Brien* [2013] EWCA Civ 546.
303. *Gardner v Moore* [1984] AC 548.
304. *Gray v Barr* [1971] 2 QB 554 (CA).
305. *Geismar v Sun Alliance* [1978] QB 383.
306. *Brook v Trafalgar* (1949) 79 Lloyd's LR 365 (CA).
307. Note that under this system the managing agent of the leading syndicate (of insurers) has authority on behalf of the following syndicates (of insurers) to settle low value 'standard claims'.
308. Unless the source is reliable and it is clear from the nature of the case that a claim by the insured is likely; for example, in the case of a motor insurance claim, a reliable third party source is the police: *Barratt* v *Davies* [1966] 2 Lloyd's Rep 1 (CA).
309. *Holwell Securities Ltd* v *Hughes* [1974] 1 All ER 161 (CA).
310. *Brook* (above).
311. *A/S Rendal* v *Arcos Ltd* (1937) 58 Ll L Rep 287 (HL).
312. *Hadenfayre Ltd* v *British National Ins Sy Ltd* [1984] 2 Lloyd's Rep 393, 402.

313. *Adamson & Sons* v *Liverpool & London & Globe Ins Co Ltd* [1953] 2 Lloyd's Rep 355. It is no excuse that the claimant did not give notice because he or she had been unaware of the insurance or had forgotten about it.
314. *Re Coleman's Depositories and Life & Health Assurance Assn* [1907] 2 KB 798, 807 (CA).
315. *Verelst's Administratrix* v *Motor Union Ins Co* [1925] 2 KB 137, 142–143.
316. *Re Coleman's.*
317. See *The Vainqueur José* [1979] 1 Lloyd's Rep 557.
318. See *Pioneer Concrete (UK) Ltd* v *National Employers' Mutual* [1985] 2 All ER 395, 400.
319. *Boyle* v *Yorkshire Ins Co Ltd* [1925] 2 DLR 596, 598.
320. Particulars are no more than assertions of fact, which a claimant may be required to prove later; thus it is not necessary that the claim should have been quantified yet.
321. *Welch v Royal Exchange* [1939] 1 KB 294, 315 (CA).
322. e.g. in Scotland (Ct Sess) *Ballantine* v *Employers Ins Co Ltd* (1893) 21 R 305, 316–317; see also *AB* v *Northern Accident Ins Co Ltd* (1896) 24 R 258, 266.
323. *Re Coleman's* (above), p. 813.
324. *K/S Merc-Scandia XXXXII* v *Certain Lloyd's Underwriters* [2001] Lloyd's Rep IR 802 (CA).
325. *Cf Nsubuga* v *Commercial Union* [1998] 2 Lloyd's Rep 682 and *Galloway* v *GRE* [1999] Lloyd's Rep IR 209, 214 (CA).
326. *K/S Merc-Scandia XXXXII* v *Certain Lloyd's Underwriters* [2001] EWCA Civ 1275.
327. *Agapitos* v *Agnew* [2003] QB 556 (CA) [30], followed initially in *Versloot Dredging* v *HDI-Gerling, The DC Merwestone* The insured gains, because e.g.he gets quicker payment of the money than if the truth had been told. The justice of the device was later questioned in *Versloot.*
327. Fraud "infects and vitiates every mercantile contract": *Pawson* v *Watson* (1778) 2 Cowp 785, 788.
329. The MIA s. 17 (the law for non-marine insurance too) that a "contract of marine insurance is a contract based upon utmost good faith, and [in case of fraud] the contract may be avoided".
330. Insurance Act 2015 s.12(1). Further, according to s.12(2), where "the insurer does not treat the contract as having been terminated, it may refuse all liability to the insured under the contract in respect of [loss] occurring after the time of the fraudulent act".
331. *The Kanchenjunga* [1990] 1 Lloyd's Rep 391, 399 (HL).
332. *Kosmar Villa Holiday* v *The Trustees of Syndicate 1243* [2008] EWCA Civ 147, [38].
333. *Allen* v *Robles* [1969] 2 Lloyd's Rep 61, 64 (CA).
334. The Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968, and Council Regulation (EC) No 44/2001 of 22 December 2000 (the 'Brussels Regulation') The 1968 Convention, as amended, was enacted in the UK by the Civil Jurisdiction and Judgments Act 1982. The Brussels Regulation was implemented in the UK mainly by the Civil Jurisdiction and Judgments Act 2001.Order.
335. Other cases are governed by the common law.
336. Awards may be enforced by means of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention, to which effect has been given in England and certain other countries.
337. One attraction of the FOS is that it may apply what it sees as "good industry practice" rather than the current state of the law.

338. *South Staffs Tramways Co Ltd* v *Sickness & Accident Assurance Assn Ltd* [1891] 1 QB 402 (CA).
339. *Beacon Ins Co Ltd* v *Langdale* (1939) 65 Ll L Rep 57 (CA).
340. *Re Wright and Pole* (1834) 1 A & E 621.
341. *Richard Aubrey Film Productions Ltd* v *Graham* [1960] 2 Lloyd's Rep 101, 103.
342. *Dodd Properties (Kent) Ltd* v *Canterbury CC* [1980] 1 All ER 928, 938 (CA).
343. *Leppard* v *Excess Insurance Co Ltd* [1979] 2 Lloyd's Rep 91, 96 (CA).
344. *Leppard* (above).
345. *Dominion Mosaics & Tile Co Ltd* v *Trafalgar Trucking Co Ltd* [1990] 2 All ER 246 (CA).
346. *Keystone Properties Ltd* v *Sun Alliance*, 1993 SC 494, 511.
347. The amount of payment required has been discussed in Chapter 16.
348. See *Chandris* v *Argo Ins Co Ltd* [1963] 2 Lloyd's Rep 65, 74.
349. *Burts & Harvey Ltd* v *Vulcan Boiler & General Ins Co Ltd* [1966] 1 Lloyd's Rep 354.
350. Or made in accordance with a structured settlement.
351. *Hine Bros* v *Steamship Ins Syndicate Ltd* (1895) 72 LT 79, 81, (CA).
352. *Hine* p. 82.
353. See *General Accident Fire & Life Assurance Corp Ltd* v *Midland Bk Ltd* [1940] 2 KB 388 (CA).
354. FOS *Annual Report 1991*, para 2.2.
355. See IOB *Annual Report 1991*, para 2.2.
356. *Nurdin & Peacock* v *Ramsden* [1999] 1 WLR 1249.
357. *Kelly* v *Solari* (1841) 9 M & W 54.
358. *Norwich Union Fire Ins Sy Ltd* v *Price Ltd* [1934] AC 455 (PC).
359. *London Assurance* v *Clare* (1937) 57 Ll L Rep 254.
360. *Rover International Ltd* v *Cannon Film Sales Ltd* (*No 3*) [1989] 3 All ER 423, 441–442 (CA).
361. *Herbert* v *Champion* (1809) 1 Camp 134, 136.
362. *General Accident Fire & Life Assurance Corp Ltd* v *National Bk of New Zealand Ltd* [1932] NZLR 1289, 1292.
363. *Avon CC* v *Howlett* [1983] 1 WLR 605 (CA).
364. *Lipkin Gorman* v *Karpnale Ltd* [1991] 2 AC 548.
365. Usually in writing and signed.
366. *Magee* v *Pennine Ins Co* 1969] 2 QB 507, 513 (CA).
367. *Bremer* v *Westzucker GmbH* [1981] 1 Lloyd's Rep 207, affirmed [1981] 2 Lloyd's Rep 130 (CA).
368. *Horry* v *Tate & Lyle Refineries Ltd* [1982] 2 Lloyd's Rep 416, 422,
369. *Pao On* v *Lau Yiu* [1980] AC 614, 635–636 (PC).
370. *Royal Bank of Scotland* v *Etridge (No 2)* [2002] 2 AC 773.
371. *Williams* v *Bayley* (1866) LR 1 HL 200.
372. *Inche Noriah* v *Shaik Allie Bin Omar* [1929] AC 127, 135 (PC).
373. Except in extreme cases (above).
374. *Kitchen Design & Advice Ltd* v *Lea Valley Water Co* [1989] 2 Lloyd's Rep 221.
375. Traditionally actions against insurers in England "sound in unliquidated damages *rather* than debt": *Forney* v *Dominion Ins Co Ltd* [1969] 1 Lloyd's Rep 502, 509 but "the word 'damages' was used in an unusual sense and should not be taken literally: *Jabbour* v *Custodian of Israeli Absentee Property* [1954] 1 WLR 139, 143–144

376. S. 35A(1) of the Supreme Court Act 1981, subject to the discretion of the court whether to award interest at all and, if so, at what rate.

377. See *Wadsworth* v *Lydall* [1981] 2 All ER 401 (CA); and *Sempra Metals* v *Inland Revenue* [2007] UKHL 34.

378. *Johnson* v *Gore Wood* [2002] 2 AC 1, 3.

379. *Warrington* v *Great-West Life Assurance Co* (1996) 139 DLR (4th) 18 (CA BC).

380. S.5 of the Limitation Act 1980.

381. Courts have held the money is payable as soon as the loss occurs, any genuine dispute about whether the insurer is obliged to pay has been resolved and, in the case of indemnity insurance, the loss has been quantified.